
Emergency Rules

**Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and
Division of Personnel
Chapter 3—Personnel Selection, Appointment,
Evaluation and Separation**

EMERGENCY AMENDMENT

1 CSR 20-3.070 Separation, Suspension, and Demotion. The board is amending sections (1)–(8).

PURPOSE: This amendment revises this rule pursuant to changes to Chapter 36, RSMo made by Senate Bill 1007 (2018).

EMERGENCY STATEMENT: This emergency amendment incorporates and implements changes to the law effected by Senate Bill 1007 (2018), effective August 28, 2018. Emergency amendment of this rule is necessary to preserve the compelling governmental interest of successfully implementing the changes to Chapter 36, RSMo made by Senate Bill 1007 (2018) across the departments and agencies of the executive branch of Missouri state government. Provisions of the existing rule are inconsistent with the provisions of Chapter 36, RSMo, effective August 28, 2018, and must be amended to avoid confusion or improper application, avoid potential liabilities, and to ensure consistent implementation of Senate Bill 1007 (2018). A proposed amendment which covers the same material will be filed at a later date to be published in the *Missouri Register*. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The Personnel Advisory Board believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 17, 2018, becomes effective August 28, 2018, and expires February 28, 2019.

(1) Layoffs in the classified service shall be [governed by the following provisions:] **administered by each respective appointing authority based on the needs of the service.**

(A) *Method of Layoff.* An appointing authority, in accordance with these rules and layoff procedures approved by the director, may lay off an employee in a position subject to the law whenever the appointing authority deems it necessary by reason of shortage of work or funds, the abolition of the position, or other material change in the duties or organization, or for other related reasons which are outside the employee's control and which do not reflect discredit on the service of the employee. The duties performed by an employee laid off may be reassigned to other employees already working who hold positions in appropriate classes. No regular employee shall be laid off while a person is employed on a provisional, temporary, or probationary basis in the same class in that division. However, if no regular employee subject to layoff elects to accept a transfer to a position occupied by a provisional, temporary, or probationary employee, an employee with this employment status may be retained. No temporary or permanent separation of an employee from the service as a penalty or disciplinary action shall be considered as a layoff (see section 36.360, RSMo);

(B) *Order of Layoff.* The order of layoff of employees in a classification affected will be as follows:

1. Emergency, provisional, and temporary employees will be laid off first and selection of employees for layoff shall be at the discretion of the appointing authority and as dictated by the needs of the service;

2. Original probationary employees will be laid off next in inverse order of the date of current original appointment

in the geographic location in which appointment from a merit system register occurred. However, prior to the application of the layoff procedures, promotional probationary employees in affected classes shall be reinstated to the class from which they were promoted and shall be considered for layoff in that class; and

3. Layoff of regular employees shall be made in inverse order of service credit and by class in the division or area of service involved. Reemployment and reinstatement probationary employees shall be considered as regular employees for purposes of implementing a layoff. If it is found that two (2) or more persons in the class and the division or area in which layoff is to be made have equal service credit, the order of layoff in all cases shall be in inverse order of creditable service computed to the day as calculated using MOSERS creditable service. Remaining ties shall be broken on the basis of the last regular performance appraisal. If the performance appraisals do not establish definite differentials for all regular employees in the class involved, the further order of layoff shall be determined by the appointing authority with the approval of the director, in a manner as to conserve for the state the services of the most valuable employee and giving consideration to time in the division of service from which the layoff is being made;

(C) *Notice of Layoff.* An appointing authority shall give written notice to the director of every proposed layoff and reasons for them at least thirty (30) days before the effective date unless the director waives this requirement because of a fiscal emergency. The notice shall identify the proposed area of layoff, the affected classes, and the impact of the proposed action on the classification plan of the agency involved. The director shall take action relating to the layoffs and prescribe procedures as the director considers necessary to secure compliance with these rules. Each employee affected shall be notified as far in advance of the layoff as is practicable but, in all cases, at least fifteen (15) days prior to the effective date of the layoff;

(D) *Return of Names to Registers.* The names of regular employees laid off shall be placed in order of service credit on the appropriate reinstatement register for the class in which the layoff took place. The name of any probationary employee who is laid off shall be restored to the register from which certification was made;

(E) *Area Layoff.* Layoff shall be statewide unless the appointing authority requests and the director approves layoff on a geographical area basis. Areas for the purpose of layoff shall be prescribed by the director after taking into consideration the geographic concentration and dispersion of employees in and the administrative organization of the division of service involved;

(F) *Special Layoff Status for Employees in Limited Functions or Programs.* When it is necessary to establish a function or program that is known to have a termination date, special layoff status may be established by the Personnel Advisory Board for individuals employed for such programs. Special layoff status will be identified to ensure that employees in the project are aware that the function or program will end and to protect employees and functions not in the designated function or program from undue disruptions and layoff impact when the function or program terminates. In the event of a layoff unrelated to the special project, these employees will be treated the same as other employees under the rules. Special layoff status under this rule will be governed by the following provisions:

1. To establish special layoff status the appointing authority will present to the Personnel Advisory Board information indicating the separate nature of the function or program, the

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period of time the function or program is projected to exist, the positions to be included in the function or program and the probable termination date. Upon approval, the board will establish procedures to ensure that the subject positions are identified within the records of the Division of Personnel and that employees in the identified functions or programs are notified of their special layoff status;

2. The board may approve the special layoff status for an initial period not to exceed three (3) years. If extensions are necessary, agencies may request extensions annually. Agencies may ask the board to approve amendments at any time;

3. Employees will be employed in functions or programs identified as justifying special layoff status under the same rules and procedures as are employees in areas not so identified and will have the same rights and benefits as other employees in the classified service, except for the identified special layoff status;

4. At such time as the function or program which has been approved for special layoff status terminates, layoff will be limited to employees in the identified function or program, but all other layoff rules and procedures will be followed for positions identified for the project. Employees laid off will be placed on the appropriate reinstatement registers in accordance with 1 CSR 20-3.020(2);

5. Special layoff status will not apply to employees who are employed in a special layoff function or program and subsequently employed in or transferred to a position not so designated; and

6. Regular employees will not be transferred to a special project involuntarily except that the plan provided to the board may include regular employees with specialized knowledge or experience who will retain normal layoff status;

(G) *Layoff Involving Special Circumstances.* If situations exist whereby layoff under certain conditions of these rules would cause unnecessary disruption to the state service, would cause employees with specialized ability to perform essential remaining work to be laid off, or would result in unfair situations, the appointing authority may develop a plan for presentation to, and approval/disapproval by, the Personnel Advisory Board. This plan will describe in detail undesirable consequences resulting from a layoff in compliance with these rules and will propose an alternative method. This plan may describe specific knowledges, skills, and abilities required to perform the remaining work or may describe situations whereby an alternative method of layoff would more accurately meet the needs of the service and prevent unfair situations. The proposed procedures will be made available to employees of the affected divisions of service and their representatives prior to the proposed procedures being presented to the board. Employees and their representatives will be given an opportunity to be heard by the board. The board may then waive existing procedures and authorize use of the alternative procedures. Employees and their representatives will be notified of the alternative procedures; and

(H) *Transfer or Demotion in Lieu of Layoff.* Following or in connection with a layoff, an appointing authority may find it necessary to reassign employees in the affected class(es) in order to maintain essential business. Where reassignment involves the elimination of a position at one (1) location and a transfer to another physical location of work, the employees will be selected for transfer from a given location in the same order as provided for layoff. If an employee in a position which is abolished refuses to accept this transfer, the employee may be laid off in lieu of transfer. If it is impossible to staff a necessary position by transfer, the retention of

an employee otherwise subject to layoff is authorized. Regular employees whose positions are to be eliminated will first be given the opportunity, in order of service credit score, to transfer within the layoff area where employed if other vacancies exist or if other employees in the area have lower layoff scores. Regular employees who are subject to layoff also must be given the opportunity to transfer to positions in the same class in other areas occupied by probationary, provisional, or temporary employees. Demotion in lieu of layoff will be governed by section (4).]

(2) Causes for Suspension, Demotion, and Dismissal. The following are declared to be causes for suspension, demotion, or dismissal of any regular employee in the classified service, depending upon the seriousness of the cause; however, those actions may be based upon causes other than those enumerated [in this rule, namely, that the employee] below:

(A) **The employee [H]/has** willfully violated any of the provisions of the State Merit System Law or of the rules of the Personnel Advisory Board;

(B) **The employee [I]/is** incompetent, inadequate, careless, or inefficient in the performance of the duties of his/her position (specific instances to be charged) or has failed to meet established minimum standards in the performance of those duties;

(C) **The employee [H]/has** been wantonly careless or negligent in the care of the property of the state;

(D) *[Has been guilty of]* **The employee has engaged in** abusive or improper treatment toward an inmate or patient of any state institution or to a person in custody; provided the acts committed were not necessarily or lawfully committed in self-defense, to protect the lives of others, or to prevent the escape of anyone lawfully in custody;

(E) *[Has some permanent or chronic physical or mental ailment or defect which incapacitates him/her for the proper performance of the duties of his/her position, including unrehabilitated alcoholism or narcotics addiction;]* **The employee is unable, with or without a reasonable accommodation, to perform the essential functions of his or her job;**

(F) **The employee [H]/has** been habitually tardy in reporting for duty or has absented him/herself frequently from duty during the course of regular working hours; or has been completely absent from duty without prior or subsequent authorization for that absence;

(G) **The employee [H]/has** been convicted of, or **pled guilty to,** a felony or of a misdemeanor involving moral turpitude;

(H) *[Has been guilty of a]* **The employee has engaged in** scandalous and disgraceful conduct while on or off duty where this conduct tends to bring the state service into public disrepute or has exhibited behavior which adversely affects the employee's job performance, the employing agency, or both;

(I) *[Has been guilty of]* **The employee has engaged in** abusive or improper treatment of guests or clients while on duty at any state facility or on any state land normally open to the public;

(J) **The employee [H]/has** submitted a false statement of a material fact or has practiced or attempted to practice any fraud or deception in an application or examination or in otherwise attempting to secure employment subject to the provisions of these rules;

(K) **The employee [H]/has [been guilty of] engaged in** insubordination or has failed to respond in a reasonable manner to his/her lawful orders or instructions of persons with duly delegated authority over the employee;

(L) **The employee [H]/has** willfully violated the lawful regulations or policies of the agency by which employed after having been made aware of the regulations and policies;

(M) **The employee [H]/has** been abusive or physically violent toward other employees while on duty or in the duty area or has willfully exhibited behavior which is disruptive of the working activities of other employees;

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(N) **The employee** [H]/has been intoxicated or under the influence of a controlled substance while on duty, except as may have been required by a licensed medical physician; or

(O) **The employee** [H]/has practiced or attempted to practice fraud or deception in securing or attempting to secure benefits or grants from a state agency either for him/herself or for another applicant.

(3) Suspension. An appointing authority, for disciplinary purposes, may suspend, without pay, any employee in his/her division. A suspension may be made for a length of time as s/he considers appropriate, not exceeding twenty (20) working days in any twelve- (12-)/-/ month period except that this limitation shall not apply in the event of a terminal suspension given in conjunction with a dismissal; a suspension given in connection with a criminal offense involving the use of a controlled substance; or, with the approval of the director, a suspension made pending the investigation or trial of any charges against the employee (see section 36.370, RSMo). Employees enumerated in 1 CSR 20-5.010(1)(C) and (D) and designated as exempt from the overtime requirements of the Fair Labor Standards Act shall not be suspended from duty without pay for disciplinary purposes unless the said suspension is for one (1) or more full workdays.

(A) Any employee **covered under section 36.030.1(2), RSMo** being suspended shall be furnished with a statement in writing specifically setting forth the reasons for the suspension. A copy of the statement shall be furnished to the director. No suspension of a regular employee for a period longer than five (5) workdays shall take effect unless, prior to the effective date, the appointing authority gives to the employee a written statement setting forth in substance the reason, informs the employee of appeal rights, provides the employee with a copy of the form for appeal to the administrative hearing commission, and provides the employee with an opportunity to respond to the reason prior to the effective date. Any regular employee who is suspended for more than five (5) workdays may appeal in writing to the administrative hearing commission within thirty (30) days after the effective date thereof setting forth in substance reasons for claiming the suspension was for political, religious, or racial reasons or not for the good of the service. For the purpose of the appeal process, the effective date of a suspension will be the first day the employee is suspended without pay. **There is no appeal from a suspension of five (5) working days or less. Employees not covered under section 36.030.1(2), RSMo do not have the right to notice or an opportunity to be heard on such suspension.**

(B) Any employee **covered under section 36.030.1(2), RSMo** being suspended for a period of five (5) workdays or less shall be given a statement in writing specifically setting forth the reasons for the suspension. A copy of that statement shall be furnished to the director. No suspension of a regular employee for a period of five (5) days or less shall take effect unless, prior to the effective date, the appointing authority gives to the employee a written statement setting forth in substance the reason and gives the employee an opportunity to respond to the reason. **Employees not covered under section 36.030.1(2), RSMo do not have the right to notice, opportunity to be heard, or appeal from a suspension.**

(C) An employee who has been convicted of, pleads guilty to, or pleads *nolo contendere* for the first time [of] to any criminal offense involving the use of a controlled substance, and who fails to satisfactorily meet the requirements of education and treatment as defined in section 105.1105, RSMo, shall be suspended for a period of no more than three (3) months. In the case of a suspension under this section of the law, the appointing authority must provide the director and the employee with a statement in writing specifically setting forth the case for suspension and the conditions the employee must meet in order to be returned from suspension.

(E) In the event of an instance of unacceptable conduct by an employee that in the judgment of the appointing authority does not warrant immediate suspension, dismissal, or demotion, but which requires a permanent record, the appointing authority may record

such conduct in the employee's service history by notifying the personnel director in a manner prescribed by the director. **Employees do not have the right to notice, opportunity to be heard, or appeal from an unacceptable conduct record.**

(4) Demotions. An appointing authority may demote an employee in accordance with the following:

(A) No demotion for cause of a regular employee shall take effect unless, prior to the effective date, the appointing authority gives to the employee a written statement setting forth in substance the reason, informs the employee of appeal rights, provides the employee with a copy of the form for appeal to the administrative hearing commission, provides the employee with an opportunity to respond to the reason prior to the effective date, and files a copy of the statement of the reason with the director. Any regular employee who is involuntarily demoted for cause may appeal in writing to the administrative hearing commission within thirty (30) days after the effective date thereof setting forth in substance reasons for claiming that the demotion was for political, religious, or racial reasons or not for the good of the service[;]. **Employees not covered under section 36.030.1(2), RSMo do not have the right to notice, opportunity to be heard, or appeal from a demotion and may be demoted for no reason or any reason not prohibited by law; and**

(B) No demotions for cause shall be made unless the employee to be demoted meets the minimum qualifications for the lower class and shall not be made if any regular employee in the lower class would be laid off by reason of the action[; and]

[(C) A regular employee shall be demoted in lieu of layoff within the employee's division of service to a position in a lower class in the same occupational job series or to a position in a lower class in which the employee previously has obtained regular status within any merit system agency. Such action shall be taken upon written request by the affected employee to the appointing authority and shall occur even though this action may result in a layoff in the lower class. The appointing authority may also, upon written request of the regular employee affected, demote such employee in lieu of layoff to a position in the employee's division of service for which the employee meets the minimum qualifications, even if this action may require layoffs in the lower class. In the event of a demotion in lieu of layoff, an employee shall have his/her name placed on the appropriate register in accordance with the procedure outlined in subsection (1)(D) for employees actually laid off].

(5) Dismissals. *[An appointing authority may dismiss for cause any employee in his/her division occupying a position subject hereto when s/he considers the action is required in the interests of efficient administration and that the good of the service will be served.]*

(A) No dismissal of a regular employee shall take effect unless, prior to the effective date, the appointing authority gives to the regular employee a written statement setting forth, in substance, the reason, informs the regular employee of appeal rights, provides the regular employee with a copy of the form for appeal to the [a]Administrative [h]Hearing [c]Commission, and provides the regular employee with an opportunity to respond to the reason prior to the effective date[, and files a copy of the statement of the reason with the director]. *[Any regular employee who is dismissed shall have the right to appeal in writing to the administrative hearing commission within thirty (30) days after the effective date setting forth in substance reasons for claiming the dismissal was for political, religious, or racial reasons or not for the good of the service.]*

[(B) If the director determines that the statement of reasons for the dismissal given by the appointing authority shows that the dismissal does not reflect discredit on the

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character or conduct of the employee, the director, upon request of the employee, may approve reemployment eligibility in an appropriate class or classes.

(C) For non-merit agencies that have elected to follow the provisions for appeals for certain positions provided in section 36.390, RSMo, or have failed to adopt dismissal procedures substantially similar to those provided for merit employees, the following applies:

1. No dismissal of a non-merit employee shall take effect unless, prior to the effective date of the dismissal—

A. The appointing authority gives the employee a written statement setting forth in substance why this dismissal is for the good of the service or not against the good of the service;

B. The appointing authority informs the employee of his/her appeal rights and provides the employee with a copy of the form for appeal to the Administrative Hearing Commission; and

C. The appointing authority files a copy of the statement with the director.

2. This regulation does not require that the appointing authority articulate “cause” or a reason for the employee’s dismissal. Further, the terms “cause” and “for the good of the service” are not synonymous.

(D) Any regular non-merit employee who is dismissed from an agency that has elected to follow the provisions for appeals for certain positions provided in section 36.390, RSMo, or has failed to adopt dismissal procedures substantially similar to those provided for merit employees, shall have the right to appeal in writing within thirty (30) days after the effective date of the dismissal.]

(B) Employees not covered under section 36.030.1(2), RSMo do not have the right to notice, opportunity to be heard, or appeal from a dismissal and may be dismissed for no reason or any reason not prohibited by law.

(6) Resignations from the classified service shall be governed by the following provisions:

(A) Method of Resignation. To resign in good standing, an employee must give the appointing authority at least *[fifteen (15)] fourteen (14)* calendar days prior notice unless the appointing authority, because of extenuating circumstances, agrees to permit a shorter period of notice. A written resignation shall be supplied by the employee to the appointing authority. *[All resignations shall be finally approved by the director as a matter of record];*

[(B) Required Resignations. Any employee holding a position in the classified service shall resign his/her position prior to filing as a candidate for public office or seeking or accepting nomination for election or appointment as an official of a political party, club, or organization or serving as a member of a committee of any such group or organization; and]

*[(C)](B) An employee who applies and is approved by the applicable state benefit system for long-term disability or retirement status shall be deemed to have voluntarily resigned *[(with reemployment eligibility) unless:]*.*

[1. The appointing authority approves an application made by the employee for a leave of absence without pay pursuant to 1 CSR 20-5.020(7) based on the expectation that the employee may be rehabilitated and return to work; or

2. The employee is eligible to receive a partial disability benefit under the state’s long-term disability program and the appointing authority can accommodate a part-time work schedule for the employee.]

(7) Absence Without Leave. The following provisions apply to regular employees who are absent from duty without appropriate autho-

rization:

(A) A[n] regular employee who absents him/herself from duty without prior authorization and under conditions which are not subsequently found to justify the granting of leave under these rules, depending upon the reason for and length of the absence, may be subject to appropriate discipline as provided in these rules;

(B) If a[n] regular employee is dismissed for a continuing period of unauthorized absence, the circumstances of which indicate that the employee does not intend to return to duty, the notice of dismissal may allow the employee the option of submitting a resignation; and

(C) If a[n] regular employee requests a leave of absence without pay under these rules and the appointing authority does not find it practicable to grant leave under its normal policy in those cases, a continuing absence from duty without leave after the denial of this request will require the separation of the employee. If the employee, after being so notified, does not elect to submit a voluntary resignation, the appointing authority may separate the employee by dismissal as provided in these rules. *[However, dismissals shall be without prejudice unless also based on other causes reflecting discredit on the character or conduct of the employee. If the director determines that the dismissal does not reflect discredit on the character or conduct of the employee, s/he shall approve reemployment eligibility in an appropriate class or classes for the employee so dismissed.]*

(8) Furloughs of Employees in the Classified Service. An appointing authority, in accordance with these rules and procedures approved by the director and the board, may place an employee in a position subject to this law on a furlough without pay for a limited period of time whenever deemed necessary by reason of shortage of funds, or for other reasons which are outside the employee’s control and which do not reflect discredit on the service of the employee. When a furlough or furloughs become necessary, the appointing authority will present a plan to the director and to the board describing why a furlough of limited duration is necessary, the functional areas that are affected, the number of employees who will need to be furloughed, and a detailed plan indicating why specific employees have been designated for furlough. Furloughs need not be for a continuous period for all employees involved. *[No employee will be furloughed for more than thirty (30) working days in a twelve (12)-month period.]* The furlough plan shall be submitted to the board for approval. Whenever, in the opinion of the director, there is an urgent necessity for the immediate approval of a furlough plan, the director may approve a plan until the board has an opportunity to act on the plan. Upon approval of the plan, employees to be furloughed will be given at least five (5) working days notice *[and will be notified of the length of the furlough period]*. *[If the furlough can be ended earlier than the initial period,] Once the furlough ends, employees will be given up to forty-eight (48) hours to report. If the appointing authority determines that it is necessary to lay the employee(s) off on a permanent basis, *[the provisions for layoffs described in these rules shall apply] a layoff may be conducted by the appointing authority.**

AUTHORITY: sections 36.025 and 36.070, RSMo [2000] Supp. 2018. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 17, 2018, effective Aug. 28, 2018, expires Feb. 28, 2019. An emergency amendment covering this same material will be published in the October 1, 2018, issue of the Missouri Register. A proposed amendment covering this same material will be filed at a later date to be published in the Missouri Register.