

LAYOFF FOR INABILITY TO PERFORM JOB DUTIES

PURPOSE: To ensure compliance with Worker's Compensation and disability laws and to facilitate separation from employment of employees who are unable to perform the duties and activities of their job.

SCOPE: This policy applies to all county offices and employees. The employment status of the employee determines eligibility for certain county programs and the application of laws and regulations, employment agreements and the County Code. The County disability program is not available to temporary employees. Temporary employees are not subject to leaves of absence or layoff.

POLICY STATEMENT:

Clackamas County incurs substantial costs when an employee becomes sick or disabled and is unable to work. Costs occur in two broad categories:

- A. Those employees who are injured on the job, causing absence from the job, and are on worker's compensation and/or disability insurance.
- B. Those employees who become sick or injured away from the job, causing absence from the job, and who must use sick leave, take leave of absence or receive disability insurance payments.

The County encourages the retention of valuable employees by making reasonable accommodation for disabilities, offering return to work programs for Workers Compensation enrollees and considering short term light-duty assignments when available. When employees are no longer able to perform productive work for Clackamas County in a safe manner, the County will facilitate separation from employment.

ON-THE-JOB INJURY

If an employee is injured on the job and is unable to work, supervisors should immediately contact the Risk & Benefits Division and complete the appropriate Worker's Compensation and/or accident forms. The Risk & Benefits Division will make an eligibility determination, give written notification of eligibility status to Personnel, Payroll, and the department director and will monitor the status of the claim. If the claim is denied, sick leave and Family Medical Leave may be used as appropriate.

If the Worker's Compensation claim is accepted, the Risk & Benefits and Personnel Divisions will monitor the employee's progress and rehabilitation via required medical reports. It is the responsibility of the employee to keep the County informed of his/her medical/rehabilitation status. Every effort will be made to return the employee to work as soon as medically feasible.

The County will supplement the statutory amount of salary received from Worker's Compensation for an accumulative amount of 130 days for the same injury for employees on a five day work week (prorated for employees who work other weekly schedules). This supplemental amount is intended to ensure that the employee receives approximately 100 percent of take home pay (unless otherwise specified in the applicable collective bargaining agreements). During this period of time, health and life insurance benefits will continue pursuant to the terms of the applicable collective bargaining agreement and/or the County Code.

Time loss benefits are based on a five day work week and do not include additional holiday pay. Unless otherwise mandated by law, payroll deductions will not be made from time loss benefits, nor will PERS and FICA be paid by the County.

At the end of the initial six-month period, if the employee is still unable to return to work, the employee may petition the Board of County Commissioners for an extension of supplemental worker's compensation benefits and health and life insurance benefits for up to an additional six months. The employee may petition the Board of County Commissioners for an additional extension when medical documentation indicates that the employee will be able to return to work at a specified date in the future.

NON JOB-RELATED INJURY OR ILLNESS

If the employee is disabled due to non-job related causes, the employee must use sick leave and file for Family and Medical Leave and disability benefits with the Risk & Benefits Division, both of which require medical certification from the employee's health care provider. The disability program requires a 30 calendar day waiting period or exhaustion of all sick leave, whichever is longer, before benefits payments begin. When sick leave is exhausted, the employee has the option of using vacation until exhausted or requesting a leave without pay not to exceed 90 days.

If the employee qualifies for the Family and Medical Leave and/or disability benefits as determined by the insurance carrier, the Risk & Benefits Division will monitor the required medical reports and keep the department director and the Personnel Division apprised of the medical status of the employee.

At the end of the initial 90-day leave without pay, if the employee is still unable to return to work, the employee may petition the Board of County Commissioners for an extension of leave without pay for up to an additional 90 days. The employee may petition the Board of County Commissioners for an additional extension when medical documentation indicates that the employee will be able to return to work at a specified date in the future. If the medical documentation verifies inability to perform the job and the prognosis precludes probable improvement, it is appropriate to initiate layoff.

PRE-LAYOFF REQUIREMENT

The appointing authority shall consult with the Personnel Division when faced with a potential layoff for physical inability to perform the duties of the position. If a layoff is necessary, proper written notification will be given to the employee. Written notification will include official notice of the action being taken, the reason for the layoff as verified by the attending physician and provide a date within the 15 day notice period for a pre-layoff meeting between the employee, his/her representative, the department, Personnel, and Risk & Benefits. The meeting will provide a forum for the exchange and clarification of information related to the layoff.

If medical documentation verifies that the employee is medically stationary but is unable to perform his/her job, it is appropriate to determine if reasonable accommodation has been requested and can be made. (See EPP #3 – Americans with Disabilities Act for a discussion on reasonable accommodation). If there is no reasonable accommodation which can be made, then it is appropriate to consider the employee for separation from employment. Under the County Code, classified or regular status employees would be subject to layoff and temporary employees would be subject to dismissal. Before a final determination is made, the department director should discuss the situation with the Department of Employee Services to ensure consistency with the Americans with Disabilities Act, Workers' Compensation law and County policy.

If "reasonable accommodation" has been requested, an interactive dialogue is required to determine if "reasonable accommodation" for an individual with a disability is possible, whether a rehabilitation program is appropriate or if layoff is necessary. Other possible alternatives to layoff including reassignment and demotion should be considered prior to initiating layoff. The Personnel Division will review the circumstances of each disabled employee to ensure that appropriate procedures have been followed and that all obligations under the Americans with Disabilities Act have been met.

LAYOFF PROCEDURE

When medical documentation indicates that the medical condition precludes return to the employee's position and other viable employment options or accommodations are not feasible, consideration for layoff is appropriate. A disabled employee may be laid off according to County Code 2.05.200, without reflecting any discredit on the service of that employee. Layoff may be initiated before all sick leave credit is exhausted if the medical documentation supports the decision. The department shall prepare a Personnel Action form prior to layoff to allow Payroll adequate time to prepare and provide the employee with any payments required at the time of layoff.

Any regular status employee who is laid off will be placed on the layoff register for his/her classification and will be given preference for rehire for two years from layoff (unless otherwise specified in the employee's collective bargaining agreement). Employees may be rehired from layoff status only to a vacant position for which the employee possesses all of the minimum requirements, including proof of medical ability to perform the duties of the position.

Previously accrued sick leave, seniority, and previous service for determination of vacation and longevity accruals will be restored if the employee is re-employed from the layoff register.

ABSENCE, BENEFITS AND PROBATIONARY PERIOD

Individuals who are receiving Worker's Compensation continue to receive credit toward seniority, salary increase, longevity and vacation during the supplemental pay period. For all other situations credit for time toward salary increases, vacation and longevity accrual levels are based on the 11 day rule. This rule states that an employee must be in a paid status, working greater than half-time, at least 11 work days in a month to receive accrual credit for that month. All employees continue to receive seniority for all approved leaves, paid or non-paid, except time spent on layoff status. A regular employee who is re-employed from the layoff register will receive full restoration of previously accrued time toward seniority, salary increases, vacation, longevity (except for time actually on layoff status) and shall regain any sick leave balance.

Under Worker's Compensation Law, the employer must reinstate the worker to his/her former job if the job is available and if the individual is able to perform the job as verified by approved medical documentation. If the employee is unable to perform the former job, the employee has the right to the next "available and suitable" position. This employer responsibility continues until an offer has been made, even if the employee is laid off. The Personnel Division, the Risk & Benefits Division and the department director will evaluate available employment alternatives prior to and after initiating layoff.

The probationary period is calculated on a calendar basis. Individuals re-employed from layoff are not required to complete a new probationary period. A probationary employee who is absent on leave, paid or unpaid, or on layoff status exceeding 30 days shall serve the remainder of his/her probation if recalled.

Individuals who are receiving Worker's Compensation within the six month supplemental pay period will continue to receive their medical, dental and life insurance benefits. However, when there is an employee contribution for benefits, the employee will be responsible for payment of the employee contribution during the disability period. Medical benefits may be available for an additional six months (unless otherwise specified in the applicable collective bargaining agreement). Approved medical expenses for the Worker's Compensation claim are paid by the Worker's Compensation Fund.

Unless otherwise stated in the applicable collective bargaining agreement, medical, dental, and disability insurance are provided only for those months in which the employee is working, or in a paid status, either:

- a. on the first working day of the month; or,
- b. at least eleven (11) days during that month.

However, employees who are on qualified Family Medical Leave will have medical and dental coverage continued for up to twelve (12) weeks or as provided by Federal or State law. (See EPP #10 - Family Medical Leave for more information.)

Life insurance will be continued for up to ninety (90) days during a non-medical leave of absence and up to one hundred eighty (180) days during a medical leave of absence.

An employee who is on unpaid leave of absence during his/her benefit waiting period will have his/her benefits effective date extended one full month for **each** month where he/she is not working or in a paid status for at least eleven (11) working days of that month.

An employee who loses coverage due to an unpaid leave of absence or layoff may continue his/her medical and dental coverage by paying for COBRA continuation coverage through the Risk & Benefits Division. COBRA continuation coverage is available for a period of up to eighteen (18) months (or twenty-nine (29) months if qualified as disabled by the Social Security Administration) or as otherwise established under Federal or State law. If an employee's separation status from the County is a disability retirement certified by the Public Employees Retirement System (PERS) as disabled and receiving PERS disability retirement benefits, coverage may be continued as a retiree. Retiree coverage continues until retiree voluntarily discontinues the coverage by providing written notification or fails to make payment. Information regarding COBRA will be mailed to the employee or former employee from the Risk & Benefits Division upon receipt of a Personnel Action form from the department indicating a leave of absence or layoff. An employee may also be eligible to convert to a non-group plan by contacting the insurance carrier directly.

An employee who was covered by benefits at the time of a medical layoff, and is reinstated to employment within six (6) months from layoff, will have the benefit waiting period waived. An employee who has continuously participated in COBRA continuation coverage during a medical layoff, and is reinstated to employment within eighteen (18) months from layoff, will have the benefit waiting period waived.

An employee who is permanently and totally disabled may qualify for continued life insurance under the Waiver of Premium provision. Contact the Risk & Benefits Division for additional information.

If there are questions on the issue of layoff, disability or workers' compensation and its effect on employees' benefits and accruals, please do not hesitate to contact the Personnel Division, or the Risk & Benefits Division. Note that any statement above is general in nature as specific determinations of eligibility for benefits may be impacted by contracts with insurance carriers or by changes in the County's benefits plan design.

Attachment

INTERNET LINKS

County Ordinance (<http://www.clackamas.us/docs/code/title2.pdf>)

EPP 3 – Americans with Disabilities Act

EPP 10 – Family and Medical Leave Policy

SAMPLE LAYOFF LETTER

Date
Name
Address

Dear Employee:

It has become apparent that your medical condition will require placement on layoff status with the County for inability to perform assigned duties. The medical examination, conducted on (date of exam) by (doctor's name) states that ("quote doctor's recommendation as to outcome of exam and why the person will be unable to return to work").

The County's County Code 2.05.200, allows for layoff due to inability to perform assigned duties. Although this is a difficult action to take, we are unable to offer any other options at this time.

Please accept this letter as official notification of intent to lay off effective (date with appropriate notice per contract [ten to fifteen days]). In compliance with the County's County Code, 2.05.200 (or applicable collective bargaining agreement section), you will be placed on the layoff register for your classification for (the period of time specified by the employee's collective bargaining agreement or the County Code). To become active and available for recall, you must contact the Personnel Division and provide a written release to return to work from your physician. This is not a guarantee of re-employment, nor is there a position being held for you.

If you are eligible for Worker's Compensation benefits, I recommend that you stay in touch with the Risk & Benefits Division who will continue to advise you of your benefits status. If your medical condition changes as verified by a physician's report, we will reassess available and suitable positions as required by Worker's Compensation laws.

Also, should you choose to retire during the period of time that you are in layoff status, please contact your department supervisor and the Personnel Division so that we can process the Personnel Action and make the administrative changes. PERS retirement information can be obtained by contacting a PERS retirement counselor.

We anticipate that you may have many questions and concerns regarding this action. We have arranged a meeting time at (place, date, time) to meet with you, your representative (relative/attorney/union representative), a Personnel representative, a Risk & Benefits representative, and a representative from the department to discuss concerns or questions you have regarding this change in your employment status. I would appreciate a confirmation from you that this is convenient for you. If you have questions, please do not hesitate to contact me.

Sincerely,

Department Director

Pre-Layoff Process

Qualification For Medical Layoff

- Interactive dialogue regarding any reasonable accommodation has been completed and documented through DES.
- Medical documentation supporting employee can no longer perform the essential duties of the position with or without reasonable accommodation.

People Attending the Pre-Layoff Meeting

- Employee
- Employee's Representative (relative, partner, attorney, and/or union representative)
- Department Director or Elected Official
- Supervisor of Employee
- Risk and Benefits Analyst (to explain COBRA, Disability, WC, PERS, etc.)
- Employee Relations Manager or Analyst (to explain medical layoff, register, etc.)

Agenda for Pre-Layoff Meeting

1. Explain what medical layoff means. Difference between medical layoff (not generally covered in bargaining agreements) and economic layoffs. (Employee Relations Manager or Analyst)
2. Explain layoff register.
 - Employee placed on layoff register for his/her classification and will be given preference for rehire for two (2) years from layoff (unless otherwise specified in the employee's collective bargaining agreement.)
 - Preference means that the employee's name will be included with the four highest scoring applicant names from the recruitment process for participation in an interview with the hiring department.
 - Employees may be rehired from layoff status only to a vacant position for which the employee possesses all of the minimum requirements, including proof of medical ability to perform the duties of the position.
 - Previously accrued sick leave, seniority, and previous service for determination of vacation and longevity accruals will be restored if the employee is re-employed from the layoff register. (Employee Relations Manager or Analyst)
3. Under Worker's Compensation Law, (if the employee was injured on the job and approved for Worker's Compensation) the employer must reinstate the worker to his/her former job if the job is available and if the individual is able to perform the job as verified by approved medical documentation. If the employee is unable to perform the former job, the employee has the right to the next "available and suitable" position. This employer responsibility continues until an offer has been made, even if the employee is laid off. The Personnel Division, the Risk & Benefits Division and the department director will evaluate available employment alternatives prior to and after initiating layoff. (Employee Relations Manager or Analyst)
4. COBRA, Disability, PERS, etc. (Benefits Analyst)
5. Transition, acknowledgment of service, etc. (Department Director/Elected Official and Supervisor)
6. Employee questions

Resources: EPP #3 – Americans with Disabilities Act