

ARTICLE 38

LAYOFF

Determination of the Necessity to Lay Off

- 38.1 The necessity for layoff of faculty unit employees shall be determined by the Employer on the basis of whether there exists, on a particular campus, **due to** a lack of work, or **financial exigency**¹ (lack of funds), or a programmatic change. Upon such a determination, the procedures of this Article shall apply.
- 38.2 Considerations in making such a determination shall include but not be limited to student enrollment data and projections, available funds, and scheduled curricular and program changes.
- 38.X ~~The President may consider alternative programs to mitigate layoffs prior to implementation of the procedures in this Article. If the President determines such a program is appropriate, the CSU will immediately notify the Union. Within seven (7) days of notification to CFA of alternative programs, CFA may request to meet and confer pursuant to HEERA. Such session(s) shall take place within thirty (30) days of the request.~~

Exclusive Representative Notification and Representation

- 38.3 When the CSU determines that there **may be** ~~is a likelihood~~ a need for implementation of any layoff procedures outlined in this Article, the CSU shall notify CFA. The CSU agrees to immediately meet and confer with the CFA on the bargaining unit impact. **When the CSU claims a financial exigency, it shall supply CFA with data verifying the financial exigency.**
- 38.4 Upon request of CFA, relevant information regarding the layoff shall be provided by the CSU in a timely manner. Such information may include, but shall not be limited to, current student/faculty ratios, enrollment trends and projections, scheduled campus organizational changes, and scheduled curricular and program changes.

¹ As defined by AAUP.

38.5 Within seven (7) days of notification to CFA of a **potential** layoff, CFA may request to consult pursuant to HEERA on alternatives to layoff. Such consultation session(s) shall take place within thirty (30) days of the request.

38.6 ~~Following the notice of layoff to Unit 3 employees, T~~The following voluntary options/programs to avoid layoff ~~shall~~ may be made available pursuant to this Agreement and program requirements. Such options/programs ~~shall~~ may include but not be limited to:

- a. leaves of absence without pay, pursuant to Article 22;
- b. voluntary reduced time base;
- c. temporary reassignment, full or partial;
- d. visiting appointments on another campus;
- e. extension appointments to augment reduction in time base;
- f. voluntary retirement;
- g. ~~early entry in the~~ a waiver of the 6 month notification requirement for PRTB, pursuant to Article 30.1a;
- h. difference in pay leaves, pursuant to Article 28;
- i. voluntary deferral of sabbaticals, pursuant to Article 27;
- j. a waiver of the 6 month notification requirement for FERP in 29.2;

Unit of Layoff

38.7 For faculty employees, the unit of layoff shall be by department or equivalent unit.

38.8 For librarians, the unit of layoff shall be the library.

38.9 For coaches, the unit of layoff shall be by classification title and coaching specialty, regardless of work year.

- 38.10 For counselors, the unit of layoff shall be by classification title and specialty, regardless of work year.

Order of Layoff

- 38.11 The order of layoff within a unit of layoff designated by the President for a reduction in force shall be:

- a. first, less than full-time temporary faculty unit employees who do not hold a three-year (or longer) appointment;
- b. next, full-time temporary faculty unit employees who do not hold a three-year (or longer) appointment;
- c. next, less than full-time temporary faculty unit employees who hold a three-year (or longer) appointment;
- d. next, full-time temporary faculty unit employees who hold a three-year (or longer) appointment;
- e. next, long-term faculty members with a less than full-time entitlement;**
- f. next, full-time long-term faculty members;**
- g. next, faculty in the Faculty Early Retirement Program;
- h. next, probationary faculty unit employees;
- i. last, tenured faculty unit employees.

- 38.12 Non-reappointment of a temporary faculty unit employee or non-retention of a probationary faculty unit employee shall not constitute layoff.

Counselor Faculty Unit Employees: Order of Layoff

- 38.13 The order of layoff within a unit of layoff designated by the President for a reduction in force shall be:

- a. First less than full-time temporary faculty unit employees who do not hold a three-year (or longer) appointment;
- b. next, full-time temporary faculty unit employees who do not hold a three-year (or longer) appointment;

- c. next, less than full-time temporary faculty unit employees who hold a three-year (or longer) appointment;
- d. next, full-time temporary faculty unit employees who hold a three-year (or longer) appointment;
- e. next, long-term faculty members with a less than full-time entitlement;**
- f. next, full-time long-term faculty members;**
- g. next, faculty in the Faculty Early Retirement Program;
- h. next, probationary faculty unit employees;
- i. last, tenured faculty unit employees.

Temporary Faculty Unit Employees: Order of Layoff

- 38.14 The President shall establish the order of layoff for less than full-time temporary faculty unit employees in a unit of layoff and full-time temporary faculty unit employees in a unit of layoff by considering only the non-ordered following factors:
- a. academic/professional specialization and qualifications needed for the program of the department or equivalent unit;
 - b. affirmative action needs of the campus and the affected department;²
 - b. c.** merit based on information in the Personnel Action File.

Long-term Faculty Unit Employees: Order of Layoff

- 38.XX The President shall establish the order of layoff for long-term faculty unit employees in a unit of layoff by reverse order of seniority. Faculty unit employees holding a joint appointment in more than one (1) department or equivalent unit shall have full seniority rights in each of the departments to which the individual has been jointly appointed.**

² Current California law prohibits giving any preferential treatment to any individual or group in public employment or public education on the basis of race, sex, color, ethnicity or national origin. As such provisions 38.14(b), 38.15(b) and 38.18 (a) will not be implemented unless the law changes.

Probationary Faculty Unit Employees: Order of Layoff

- 38.15 The President shall establish the order of layoff for probationary faculty unit employees in a unit of layoff by considering only the following non-ordered factors:
- a. academic/professional specialization and qualifications needed for the program of the department or equivalent unit;
 - b. affirmative action needs of the campus and the affected department;
[Footnote2]
 - c. merit based on information in the Personnel Action File;
 - d. seniority earned.

Tenured Faculty Unit Employees: Order of Layoff

- 38.16 The President shall establish the order of layoff for tenured faculty unit employees in a unit of layoff by reverse order of seniority. Tenured faculty unit employees holding a joint appointment in more than one (1) department or equivalent unit shall have full seniority rights in each of the departments to which the individual has been jointly appointed.

Tie-Breaking in the Order of Layoff

- 38.17 A tie exists when two (2) or more tenured faculty unit employees in a unit of layoff have the same seniority date.
- 38.18 The President shall break ties in the order of layoff by considering only the following non-ordered factors:
- a. affirmative action needs of the campus and affected department;**[Footnote1]**
 - b. relative merit, which shall be indicated, for the purpose of this provision, by the higher academic rank.

If ties still exist after the President has considered those factors, the order shall be determined by lot.

Exceptions to the Order of Layoff

- 38.19 A faculty unit employee may be excluded from the order of layoff only as provided in provision 38.20.
- 38.20 The faculty unit employee shall possess a demonstrable academic/ professional specialization needed for the current program of the affected department or equivalent unit. This academic/professional specialization is not possessed by the remaining faculty unit employees in the affected department. Such an academic/professional specialization is of a primarily non-interchangeable nature.

Notice of Layoff

- 38.21 The following requirements for notice of layoff in event of lack of funds or lack of work shall serve as the minimum requirement for the date of notice. The CSU shall endeavor to provide earlier notification of layoff than that required, whenever possible.
- a. A temporary faculty unit employee who is to be laid off shall receive notice of layoff from the President no later than forty-five (45) days prior to the effective date of layoff.
 - b. A tenured faculty unit employee participating in FERP who is to be laid off shall receive notice of layoff from the President no later than sixty (60) days prior to the effective date of layoff.
 - c. A probationary faculty unit employee who is to be laid off shall receive notice of layoff from the President no later than ninety (90) days prior to the effective date of layoff.
 - d. A tenured **or long-term** faculty unit employee who is to be laid off shall receive notice of layoff from the President no later than one hundred and eighty (180) days prior to the effective date of layoff.

- 38.22 The following requirements for notice of layoff in event of programmatic change shall serve as the minimum requirement for the date of notice. The CSU shall endeavor to provide earlier notification of layoff than that required, whenever possible.
- a. A temporary faculty unit employee who is to be laid off shall receive notice of layoff from the President no later than sixty (60) days prior to the effective date of layoff.
 - b. A tenured faculty unit employee participating in FERP who is to be laid off shall receive notice of layoff from the President no later than ninety (90) days prior to the effective date of layoff.
 - c. A probationary faculty unit employee who is to be laid off shall receive notice of layoff from the President no later than one hundred twenty (120) days prior to the effective date of layoff.
 - d. A tenured **or long-term** faculty unit employee who is to be laid off shall receive notice of layoff from the President no later than one hundred and eighty (180) days prior to the effective date of layoff.
- 38.23 A written notice of layoff shall be served by **mail with tracking and/or written notice (via hand or electronic delivery)** ~~certified mail, return receipt requested~~. Such notices shall be sent to the faculty unit employee at their address of record **and/or electronic address of record**. **The notice of layoff shall include the following information: the proposed date of the layoff, the anticipated fraction of layoff (for those faculty members being partially laid off), and the options found in 38.6 of the CBA.**

Seniority of Tenured Faculty Unit Employees

- 38.24 Seniority becomes credited upon the granting of tenure. Therefore, only tenured faculty unit employees shall earn seniority and be assigned a seniority date. The seniority date of faculty unit employees shall be established by the date of initial appointment in a department at a campus to a probationary or tenured position within the appropriate classification family. The appropriate classification family for faculty unit employees shall be those classifications listed in provision 2.13 for the appropriate employee category. The employee

with the most recent seniority date shall have the least seniority, and the employee with the least recent seniority date shall have the most seniority.

- 38.25 The seniority date of a faculty unit employee shall not be affected when a department or program is abolished, reorganized, or renamed.
- 38.26 The seniority date of a non-faculty unit employee who exercises their retreat rights to the faculty unit shall be calculated in accordance with this Article. Seniority of faculty unit employees or non-faculty unit employees earned while serving in the Chancellor's Office shall be counted upon exercise of retreat rights to the campus.

Options in Lieu of Layoff

- 38.27 In lieu of layoff, a tenured faculty unit employee who received a notice of layoff may request a temporary or permanent reassignment to another position on the campus for which they are qualified. In lieu of layoff, a probationary faculty unit employee who received a notice of layoff may request a temporary reassignment to another position on the campus for which they are qualified. Appropriate administrators shall make good-faith efforts to identify positions for which tenured or probationary faculty members who have received a notice of layoff may be qualified. In each case, a faculty unit employee may request a meeting with their appropriate administrator in order to discuss their qualifications for the new position; such request shall not be unreasonably denied. Failure to hold this meeting shall not prohibit the layoff from being implemented. All such requests shall be provided to the recipient department, which shall make a recommendation to the President regarding the request. The granting of such a request shall be subject to approval of the President. A tenured or probationary faculty unit employee shall receive written notice of reassignment. A notice of temporary reassignment shall indicate the duration of such a reassignment.
- 38.28 In cases of temporary reassignment, the tenured or probationary faculty unit employee shall maintain their position in the order of layoff and recall.
- 38.29 In cases of permanent or probationary reassignment, acceptance of the reassignment by the tenured faculty unit employee shall be deemed a waiver of any recall rights with respect to their previous department assignment. Such waiver shall be noted on any offer of permanent reassignment in lieu of layoff.

- 38.30 In cases of permanent reassignment, the tenured faculty unit employee shall maintain all seniority previously earned. This provision may be waived if a permanent reassignment is granted pursuant to provision 38.31.
- 38.31 A permanent reassignment may be granted to a tenured faculty unit employee with permanent forfeiture of all or part of their seniority. Such a permanent reassignment shall not be executed unless the faculty unit employee makes the request and provides a signed, written statement to the President indicating (a) the forfeited change in seniority date, (b) that the change is completely voluntary and binding, (c) that they have no right to restoration of original seniority date under any circumstances, and (d) that such a forfeiture shall not be cause to file allegations pursuant to Article 10 of this Agreement.
- 38.32 When departments, colleges, or other administrative units submit a proposal regarding a programmatic change or elimination that would result in the layoff of bargaining unit members due to programmatic change, the administrative unit shall attempt to include in such proposal, after consultation with the President or designee, those options, if any, to mitigate the layoffs. Such options may include placement of these faculty unit members in other positions at the University for which they are qualified, subject to applicable campus policies and procedures. The failure to identify options to mitigate potential layoffs shall not prohibit the proposal, including any resultant layoffs, from being implemented. This provision shall not be applicable to the layoff of faculty in cases where the programmatic change is due to either the lack of funds or lack of work.

Recall Rights and Opportunities

- 38.33 The President shall maintain a list of laid off faculty unit employees with effective dates of layoff for the following periods, or until the faculty unit employee returns to the position or comparable position with the same time base as previously held, whichever is earlier:
- a. tenured faculty unit employees – five (5) years;
 - b. probationary faculty unit employees – years equal to time spent in probationary status, not to exceed five (5) years.

c. **Long-term faculty unit employees** ~~Faculty on ongoing appointments pursuant to 12.xx – (5) years.~~

- 38.34 Position vacancies for which there are names of qualified individuals on the recall list shall not be filled without first making a written offer of employment by **mail with tracking registered mail, return receipt requested**, to those on the list. Faculty unit employees shall be recalled in the reverse order of being laid off. Such offer must be accepted in writing within five (5) days of receipt. Employment may commence at the beginning of the next academic term (quarter, semester).
- 38.35 A tenured or probationary faculty unit employee recalled under the conditions of this Article shall retain all rights held prior to layoff. These rights shall include reemployment with the same status, service credit (subject to PERS regulations), salary steps, sick leave, and seniority that they held at the date of layoff.
- 38.36 If an individual on the recall list declines two (2) offers of employment in the same or comparable position from which they were laid off, they waive recall rights. An individual on a recall list may request inactive status for up to one (1) year.

Reemployment Opportunities

- 38.37 The CSU shall make available information regarding employment opportunities of a similar nature to their current appointment at other CSU campuses.
- 38.38 A faculty unit employee undergoing layoff may apply for an employment vacancy for which they are qualified at any CSU campus.
- 38.39 **The CSU shall post all bargaining unit vacancies to the CSU Careers Website (<http://csucareers.calstate.edu>).** A ~~tenured or probationary~~ faculty unit employee undergoing layoff, **who has applied for a vacancy may shall receive consideration.** An application for a vacant position made by a faculty member undergoing layoff or eligible for recall opportunities shall be given priority over applications from external candidates who are not undergoing layoff nor are eligible for recall opportunities. ~~shall be provided with job clearinghouse services upon their request. Such a request shall indicate the~~

~~nature of desired future employment and the other CSU campuses at which future employment is desired. This information shall be provided to the campuses indicated and distributed to the appropriate departments or equivalent units so that an application, if any, of such a faculty unit employee may receive consideration.~~

General Provisions

- 38.40 A layoff shall refer to an involuntary separation or reduction in time base pursuant to this Article.
- 38.41 No administrators may perform teaching duties in a department in which faculty unit employees are in layoff status who have not waived recall rights.
- 38.42 ~~Upon approval of faculty unit employees in the unit of layoff,~~ The provisions of this Article may be applied so as to reduce the time base of the full-time faculty unit employees. Such reductions shall not affect probationary status or tenure or the provision of CSU benefits, except for salary. All provisions of this Article shall apply to such reductions.
- 38.43 A department or equivalent unit may recommend to the President academic/professional specializations and qualifications needed for the program as the term is used in provisions 38.14, 38.15, and 38.20.
- 38.44 The unit of layoff for a faculty unit employee shall be the department or equivalent unit in which they held a primary TSA/SAD on June 30, 1983. Permanent reassignment to another department or equivalent unit shall inactivate this provision.
- 38.45 A request for permanent reassignment pursuant to provision 38.27 shall be deemed approved if such a request is made by a faculty unit employee who, on June 30, 1983, held a secondary TSA/SAD in the recipient department or equivalent unit for which the permanent reassignment is requested.
- 38.46 The assignment of an individual serving in an administrative position to full-time duties within the bargaining unit shall not be cause for layoff of any full-time employee in that department or equivalent unit.

38.47 The partial or complete reduction in time base of a part-time temporary faculty unit employee may be accomplished pursuant to provision 12.5 and does not require the layoff of the employee pursuant to this Article.

38.48 Reemployment Rights for Three-Year Appointed Temporary Faculty

- a. A temporary faculty unit employee shall be placed on a departmental list maintained for the purpose of establishing re-employment rights under the following circumstances:
 - i. If at the end of a three-year appointment, no work exists in the department to support the subsequent appointment of the temporary faculty unit member; or
 - ii. If there is no work available to support the initial appointment of a temporary faculty unit employee under the provisions of 12.12; or
 - iii. If the time-base of the temporary faculty unit employee is zero during the third year of the temporary faculty unit employee's appointment; or
 - iv. If during the course of the three-year appointment the temporary faculty unit employee is laid-off under the terms of this Article; or
 - v. **If during the course of a full-time three-year appointment the temporary faculty unit employee's time base is reduced due to layoffs.**

When such temporary faculty unit employee is officially notified that no work exists to support the initial or subsequent appointment, or is officially notified of layoff, the official notification shall also inform the temporary faculty unit employee of the right to be placed on this list for a period not to exceed three (3) years. Upon request, CFA shall be provided with a copy of all letters informing a three-year temporary faculty unit employee that no work exists in the department to support the initial or subsequent appointment.

- b. No later than July 1 of each year during the period the temporary faculty

unit employee is on this list, the temporary faculty unit employee must inform their department chair of the temporary faculty unit employee's interest in and availability for employment. Included in this written notice shall be current, accurate contact information. Failure to notify the chair shall result in removal from this list.

- c. An individual on a reemployment list may request in writing to their department chair that they be assigned "inactive status" on such reemployment list for a period not to exceed one (1) year. The effect of such written notification shall be that the temporary faculty unit employee will not be required to be considered for assignment of work pursuant to provision 12.29 during the period that they are assigned "inactive status."
- d. The determination of whether work is available to offer those faculty on the list shall be pursuant to provision 12.29. Should work be available pursuant to 12.29, the order of assignment, the faculty member **shall resume the current appointment** ~~shall be given a new three-year appointment~~ at the time base of the work available. An employee returning from this list will be employed at the same rate of pay that they previously received at the time of non-renewal. In addition, temporary faculty unit employees so reemployed will have the same status, service credit (subject to PERS regulations), SSI and range elevation eligibility and sick leave held at the time of non-renewal, but benefits eligibility shall be determined by the faculty member's time base at the time of return to work. The period in which the employee was on this department list shall not constitute a break in service regarding rights previously accrued under Article 12.
- e. Any offer made pursuant to 38.48(d) shall be **mailed with tracking made in writing by registered mail, return receipt requested**, to the last address notified to the department chair under the provisions of 38.48(b). Such offer must be accepted in writing within five (5) days of receipt. Employment may commence at the beginning of the next academic term (quarter, semester).
- f. Where an application of 38.48(d) results in two (2) or more faculty unit employees being found to be eligible for reemployment under the provisions of this Article, then the eligible faculty unit employees shall be

recalled in the reverse order that they were placed on the reemployment list. This means that an individual who has been on the reemployment list for the shorter period of time will have preference for reemployment over any other eligible faculty unit employee.

- g. If an individual on the reemployment list declines two (2) offers of employment in the same or comparable position from which they were non-renewed, they will be considered to have waived any further employment rights under the terms of these provisions. Similarly, if a three-year appointed temporary faculty member accepts reemployment at the same or a lesser time base held in their most recent three-year appointment, then the acceptance of such work will terminate any further employment rights under the terms of these provisions.