

ALABAMA STATE PERSONNEL BOARD
ALABAMA STATE PERSONNEL DEPARTMENT
ADMINISTRATIVE CODE

CHAPTER 670-X-18
SEPARATIONS FROM SERVICE

TABLE OF CONTENTS

670-X-18-.01	Layoffs
670-X-18-.02	Dismissals
670-X-18-.03	Suspensions
670-X-18-.04	Resignations

670-X-18-.01 Layoffs.

(1) An appointing authority may lay off an employee whenever it is deemed necessary by reason of shortage of work or funds, or the abolition of a position or other material change in duties or organization. The order in which employees are to be laid off in the classified service shall be determined by the appointing authority in accordance with these rules.

(2) The appointing authority shall submit a plan for the layoff to the Director, where possible at least fifteen (15) working days in advance of the effective date, who shall review the plan to ensure that:

(a) A statement of the circumstances requiring the layoff is made.

(b) The plan includes the scope of the competitive area determined by the certification from which the affected employees were appointed, i.e., local, county, option, or statewide employment registers.

(3) The appointing authority shall certify to the Director that the layoff is not discreditable to the employee. Under no circumstances is a layoff to be used as a disciplinary action against an employee.

(4) Competition shall be among all employees holding positions of a particular class governed by the manner in which they were appointed. If the reduction in force is to apply to more than one class, each class shall be treated separately, except where reductions are to be made in a series of classes (e.g., ASA I, ASA II, ASA III).

(5) A permanent employee may displace another employee in the same classification by a process called bumping. When a position is being abolished, all departmental employees in the class can compete to determine which employee has the lowest score and should therefore be laid off. The person occupying the abolished position then has the opportunity of moving to the position occupied by the employee with the lower efficiency rating with the consent of the appointing authority.

(6) At the discretion of the appointing authority and with the approval of the Director, a permanent employee may also bump another employee in a lower class in the same series in which he formerly held status if such option is specified as part of the layoff plan. Seniority and performance appraisal scores attained in the higher class shall be included in the computation of the efficiency rating in the lower class. The Director shall make a determination about the relationship between classes for layoff purposes upon request of the appointing authority.

(7) Employees who are temporary, provisional, or probationary are considered to be nonstatus. Before permanent status employees in a job class are laid off or demoted, all nonstatus employees in the job class must be separated, except when retention is specified by law.

(8) A classified position may not be abolished if there is an individual or individuals employed by the agency outside the State Merit System performing similar duties. The non-merit employee will be separated prior to the merit employee being laid off; however, if the laid off employee is unwilling to accept the duties and conditions of the non-merit employee, this shall not apply.

(9) Employees who are conditional and the condition is affected by the layoff will be separated prior to the permanent merit employees in the same class. Employees who are conditional but the conditional reason is not affected by the layoff plan will comply with the normal layoff procedure.

(10) Efficiency ratings shall be based upon the total length of continuous service and the performance appraisals earned in the department in the class or class series affected by the layoff.

(a) Performance Appraisal Score - Average the last three performance appraisal ratings, or fewer if three are not recorded. An employee who has never received a performance appraisal and has received permanent status shall receive a score computed from the final probationary performance appraisal rating.

(b) Seniority Score - Seventy (70) points shall be allowed for completion of probation in the class. One-fourth (1/4) point shall be credited for each additional full month or major

fraction thereof for continuous state service in the class or classes affected by the layoff. (Fifteen (15) days or more will be considered as one month.)

(c) Continuous State service for the purpose of layoff means employment in the class in the department affected by the layoff without a payroll break not covered by an approved leave of absence with or without pay provided, however, that an employee laid off shall not be considered to have a break in service when reemployed within two years.

(11) Efficiency ratings shall be computed by multiplying the sum of points for performance by sixty (60) percent and the sum of points for seniority by forty (40) percent and combining the sum of both factors. The efficiency ratings so computed shall constitute an employee's "efficiency rating" as that term is used in Code of Ala. 1975, §36-26-15(b).

(12) The order of the layoff of permanent employees in each class shall be governed by the employees' respective efficiency ratings (computed in the manner just described) and veteran's preference. The layoff lists will be prepared by placing the employee with the highest efficiency rating at the top of the list, and the employee with the lowest efficiency rating at the bottom of the list. Layoff will be in inverse order beginning at the bottom of the list and the total number of positions in the class to be abolished will determine the number of employees to be laid off. Should two or more employees have the same efficiency rating, the order of layoff will be determined by giving preference for retention in the following sequence:

- (a) A veteran shall have preference over a non veteran.
- (b) The employee with the longest service in the class.
- (c) The employee with the longest departmental service.
- (d) In case of further ties, the Director shall make a determination consistent with these rules.

(13) Employees laid off will be placed on the layoff reemployment register for two years. Further, during this time period the department involved may not hire persons in the class from any register, or provisionally, as long as one available employee laid off by the department is on the layoff reemployment register for the class, provided, however, that a person who refuses an offer of reemployment shall forfeit such rights to subsequent placements. In addition to any rights currently provided to state employees, any permanent state employee who is laid off from a position under the State Merit System shall have priority for any other position in the same class filled from an open competitive register by an appointing authority in accordance with rules adopted by the Board.

(14) Any laid off person who is reemployed within the prescribed two year period from the layoff reemployment register shall not be required to serve a probationary period if reemployed in the department and the job class from which laid off.

(15) An employee who bumps to a lower class in the series as a result of layoff shall be reinstated to the former higher class with permanent status and at the pay step that the employee would have obtained had he remained in the class, as long as it is within the two year period and the appointing authority chooses to fill it. An employee who accepts a voluntary demotion in the department in lieu of a layoff and who, within two years, is promoted to the class from which the employee voluntarily demoted may be returned with permanent status to the pay step that the employee would have obtained had he remained in that class at the discretion of the appointing authority. Such promotion shall be considered a return to former status and does not entitle the employee to a promotional raise or a probationary raise.

(16) The appointing authority must give the employee(s) to be laid off written notice which includes reasons: i.e. shortage of work or funds, abolition of a position, or material change in duties or organizations. Reasonable advance notice should take into consideration the needs of the employee as well as the agency; however, where possible should be at least ten(10) working days. In addition, the appointing authority shall make all reasonable effort to provide the following information to each employee both orally and/or in writing:

(a) Benefits to which employees may be entitled, i.e., unemployment compensation procedure, employment rights, options available for health insurance, retirement.

(b) Efforts toward alternative jobs.

(17) The plan as adopted by the appointing authority shall be available upon written request for perusal by an employee or former employee adversely affected.

(18) An agency or appointing authority may enact a voluntary furlough plan for employees if the voluntary furlough plan is approved by the Department. Any furlough plan adopted by an agency or appointing authority shall be applicable to the entire agency affected and shall be voluntary at the sole discretion of the employee. The employee shall remain whole, including, but not limited to, his state retirement, state insurance, including, but not limited to, family coverage, other state benefits, leave, time of service, and status.

Author:

Statutory Authority: Code of Ala. 1975, §§36-26-9, 36-26-26.

History: Filed September 29, 1981. **Amended:** Filed February 23, 1983; effective March 30, 1983. Amended by virtue of Legislative

Act. No. 83-493; Amendment adopted April 21, 1993, effective June 15, 1993. **Amended:** Filed May 20, 2015; effective June 24, 2015.

670-X-18-.02 **Dismissals.**

(1) An appointing authority may dismiss a classified employee whenever he considers the good of the service will be served thereby, for reasons which shall be stated in writing, served on the affected employee and a copy furnished to the Director, which action shall become a public record.

(2) The dismissed employee may, within 10 days after receipt of written notice, appeal from the action of the appointing authority by filing with the Board and the appointing authority a written answer to the charges. The Board shall, if demand is made in writing by the dismissed employee within 10 days after receipt of written notice of discharge, order a public hearing and, if the charges are proved unwarranted, order the reinstatement of the employee under such conditions as the Board may determine. Upon a majority vote of the Board, the Board may impose a punishment other than termination including but not limited to a reinstatement with forfeiture of back wages and benefits between the date of termination and the date of the Board's order reinstating the employee, or a suspension up to and including 30 calendar days. (For hearing procedure, see Rule 670-X-5-.08.)

(3) In addition to removal by an appointing authority, persons in the classified service may be removed or disciplined in the manner described in this subsection. Charges may be filed by any officer, citizen or taxpayer of the state with the Director who shall, within five days, cause a copy to be served upon the person complained against and shall set a day not less than 10 nor more than 20 days after such charges have been served on such employee for a public hearing of such charges. This hearing may be before the Director, a special agent appointed for the purpose by the Director or the Board itself. If before the Director or a special agent, the Director or special agent shall take testimony offered in support and denial of such charges and from the same submit to the Board, within five days, a finding of facts and law involved and a recommended decision. The Board at its next regular or special meeting shall consider said report and modify, alter, set aside or affirm said report and certify its findings to the appointing authority who shall forthwith put the same into effect. If the Board hears said charges directly or requires the transcribing and submission of the testimony taken before the Director or special agent, it shall make up and file its own findings and decision. The decision of the Board based upon its records and the testimony shall be final. (For hearing procedure, see Rule 670-X-5-.08.)

(4) In proceedings under this section, it shall be no defense or excuse for a forbidden act or for an omission to observe the laws or rules that such act or omission was directed by a superior, unless a written direction or order from such superior to that effect is proved. If any employee in the state service shall willfully refuse or fail to appear before any court or judge, any legislative committee or any officer, board or body authorized to conduct any hearing or inquiry or, having appeared, shall refuse to testify or answer any question relating to the affairs or government of the state or the conduct of any state officer or employee on the ground that his testimony or answers would tend to incriminate him or shall refuse to waive immunity from prosecution on account of any matter about which he may be asked to testify at any such hearing or inquiry, such conduct shall be cause for removal.

(5) In all cases, before dismissing a permanent employee, the appointing authority shall consider the previous disciplinary and performance history of the employee and any progressive discipline received.

Author:

Statutory Authority: Code of Ala. 1975, §§36-26-27, 36-26-29.

History: Filed September 29, 1981. **Amended:** Filed May 20, 2015; effective June 24, 2015.

670-X-18-.03 Suspensions.

(1) An appointing authority from time to time may peremptorily suspend any employee without pay or other compensation as punishment for improper behavior, but such suspension or total suspension of the person by the appointing authority shall not exceed 30 business days in any year of service. Such suspension with loss of pay may be effected only by service upon the employee by the appointing authority of written charges setting out clearly the delinquency for which the suspension was made, a copy of which must be at the same time mailed or delivered to the Director. The suspended employee shall have a right to file with the appointing authority a written answer or explanation of such charges.

(2) The suspended employee may within 10 business days after notice pursuant to this section file a written notice of appeal from the suspension. If the suspended employee gives notice of appeal from the suspension, the appointing authority shall have the discretion of whether to stay the suspension pending the disposition of the appeal or proceed with the suspension and provide the employee with a post-suspension review subject to the time frames prescribed herein.

(a) If a timely notice of appeal is filed, the appointing authority shall elect between one of the following methods of reviewing the claim. The appointing authority shall, within

ten (10) days after receipt of the appeal, do one of the following:

(i) Appoint a panel as provided for in subsection (3) to decide questions of fact, conclusions of law, and make recommendations to the appointing authority.

(ii) Appoint a designated hearing officer as provided for in subsection (4) who will decide questions of fact, conclusions of law and make recommendations to the appointing authority.

(b) This subsection shall apply only to a department or agency of the state that has 25 or more employees for each working day during each of 20 or more calendar weeks in the current or preceding calendar year.

(3) In instances where the appointing authority elects to appoint a panel, the panel shall consist of three individuals, two of whom shall be in the same or equivalent classification as the suspended employee. The panel, by majority vote, may recommend to the appointing authority, after a hearing, either of the following:

(a) That the charges are unwarranted and that the suspension be revoked.

(b) That the charges are warranted and that the suspension be upheld.

(4) In instances where an appointing authority elects to appoint a hearing officer, the hearing officer shall be selected from a list of individuals maintained by the Department. The appointed hearing officer may be employed by the appointing authority, but shall be independent of the division or area in which the employee works. Any challenge to the appointment of an independent hearing officer shall be made to the Director within five days of notification of the appointment. However, a hearing officer may also be appointed from the Governmental Hearing Officer register, which is compiled and maintained by the Department.

(5) Irrespective of which method the appointing authority selects for adjudicating a suspension appeal hearing, all hearings shall be conducted in accordance with the notions of due process.

(6) The burden of proof shall lie with the appointing authority to prove the charges forming the basis of the suspension.

(7) Those departments or agencies that by August 1, 2001, already had in place an existing process for suspension hearings may continue to use the existing process, provided that they observe tenets of due process including that the burden of proof shall lie with the appointing authority.

(8) This rule shall not apply to any department which employed, as of August 1, 2001, and continues to employ as a standard practice in such cases a pre-disciplinary hearing before an independent hearing officer who makes a recommendation for disciplinary action to the appointing authority based upon a fair hearing of the matter.

(9) This rule shall not apply to any department which currently employs and continues to employ as a standard practice in such cases an appeal hearing before an in-house hearing officer independent of the division or area in which the employee works. Said hearing officer shall be selected from an approved list of individuals maintained by the Department.

Author: Jackie B. Graham, State Personnel Director

Statutory Authority: Code of Ala. 1975, §§36-26-9, 36-26-28.

History: Filed September 29, 1981. **Amended:** Filed June 17, 1983; effective May 24, 1985. **Amended:** Filed May 22, 2006; effective June 26, 2006. **Amended:** Filed May 20, 2015; effective June 24, 2015. **Amended:** Filed July 22, 2019; effective September 5, 2019.

670-X-18-.04 Resignations.

(1) Upon voluntary separation from the classified service an employee shall submit to his appointing authority a letter of resignation. Within ten days of receipt of such letter of resignation, the appointing authority or his designee shall enter thereon his acceptance and shall give such letter to the Director or his designee, together with a certificate that the employee's services have or have not been satisfactory and that the employee is or is not recommended for placement on a reemployment list.

(2) An employee's actions may be deemed a resignation when he has abandoned his job for three days of unexcused, unreported absence.

(3) Any person who has served satisfactorily as a permanent employee of the classified service, and who has been separated therefrom by written resignation which is approved by the Director as constituting a separation from the service in good standing may request the Director to place his name on a reemployment list. Such request shall be made in writing within two years of the date of resignation. The Director shall review the circumstances of separation and may place the name of such person on the reemployment list he deems appropriate provided, that the resigned employee has not participated in any activities which would have been grounds for dismissal had he remained in the state service during the interim.

Author:

Statutory Authority: Code of Ala. 1975, §36-26-9.

History: Filed September 29, 1981. **Amended:** Filed May 20, 2015; effective June 24, 2015.