

SAMPLE – Reduction-in-Force

[Date]

[Name]

[Address]

Via **[Hand Delivery OR Certified Mail No. _____]**

Dear **[Mr./Ms. Last Name]**:

I regret to inform you that, due to **[reason: e.g., lack of funds, lack of work, reorganization]** in the **[agency/department name]**, it is necessary to implement a reduction-in-force. Regrettably, you must be laid off from your position as **[classification]** at the close of business on **[date]**.

This reduction-in-force is being implemented in accordance with W. VA. CODE §§ 29-6-10(5), (6) and § 5F-2-2(d) *[*Local Health Departments - 5F-2-2(d) does not apply to local health departments so remove all references.]*, which provide for a layoff by organizational unit and by occupational group within that organizational unit. More specifically, W. VA. CODE §§ 29-6-10(5), (6) and *[*]*§5F-2-2(d) state:

29-6-10(5). For layoffs by classification for reason of lack of funds or work, or abolition of a position, or material changes in duties or organization, or any loss of position because of the provisions of this subdivision and for recall of employees so laid off, consideration shall be given to an employee's seniority as measured by permanent employment in the classified service or a state agency. In the event that the agency wishes to lay off a more senior employee, the agency must demonstrate that the senior employee cannot perform any other job duties held by less senior employees within that agency in the job class or any other equivalent or lower job class for which the senior employee is qualified: Provided, That if an employee refuses to accept a position in a lower job class, such employee shall retain all rights of recall as hereinafter provided.

29-6-10(6). For recall of employees, recall shall be by reverse order of layoff to any job class that the employee has previously held or a lower class in the series within the agency as that job class becomes vacant. An employee will retain his or her place on the recall list for the same period of time as his or her seniority on the date of his or her layoff or for a period of two years, whichever is less. No new employees shall be hired for any vacancy in his or her job class or in a lower job class in the series until all eligible employees on layoff are given the opportunity to refuse that job class. An employee shall be recalled onto jobs within the county wherein his or her last place of employment is located or within a county contiguous thereto. Any laid-off employee who is eligible for a vacant position shall be notified by certified mail of the vacancy. It shall be the responsibility of the employee to notify the agency of any change in his or her address.

Notwithstanding any other provision of the code to the contrary, except for the

provisions of section seven [§ 5B-2-7], article two, chapter five-b of this code, when filling vacancies at state agencies the directors of state agencies shall, for a period of twelve months after the layoff of a permanent classified employee in another agency, give preference to qualified permanent classified employees based on seniority and fitness over all but existing employees of the agency or its facilities: Provided, That employment of these persons who are qualified and who were permanently employed immediately prior to their layoff shall not supersede the recall rights of employees who have been laid off in such agency or facility.

[*]5F-2-2(d). The layoff and recall rights of employees within the classified service of the state as provided in subsections (5) and (6), section ten [§ 29-6-10(5) and (6)], article six, chapter twenty-nine of this code shall be limited to the organizational unit within the agency or board and within the occupational group established by the classification and compensation plan for the classified service of the agency or board in which the employee was employed prior to the agency or board's transfer or incorporation into the department: Provided, That the employee shall possess the qualifications established for the job class. The duration of recall rights provided in this subsection shall be limited to two years or the length of tenure, whichever is less. Except as provided in this subsection, nothing contained in this section shall be construed to abridge the rights of employees within the classified service of the state as provided in sections ten and ten-a [§§ 29-6-10 and 29-6-10(a)], article six, chapter twenty-nine of this code.

Further, the *Administrative Rule* of the Division of Personnel, W. VA. CODE R. §143-1-1 *et seq.*, provides bumping rights to classified employees. However, if there is no one in your occupational group within your organizational unit who has less seniority than you, then the bumping provisions found in subsection 12.4.g. may not apply. More specifically, subsection 12.4.g. states:

(g) Bumping Rights. -- A permanent employee who is to be laid off may request a reassignment and lateral class change or demotion without prejudice to an existing position in a class in the occupational group in the same organizational unit approved by the Board for reduction in force unless the results would be to cause the layoff of another permanent employee who possesses greater seniority. The employee exercising bumping rights must be available for the work schedule and location of the job to which he or she has requested. A permanent employee who is subsequently scheduled for layoff under these provisions as a result of another employee having greater seniority exercising his or her bumping rights by requesting a lateral class change or demotion without prejudice has the same bumping rights as provided for in this procedure. The Director shall develop the occupational groups in the classified service based on similarity of work and required knowledges, skills and abilities.

You will be paid for all annual leave days which have accumulated to your credit as of your last work day. In accordance with the *Administrative Rule*, all accumulated sick leave shall be cancelled as of the date and time of separation. Date and time of separation is defined as "Date and time last worked of employees separating due to dismissal, voluntary resignation, voluntary retirement, layoff, or sudden death; the date of death of employees who die while on paid or unpaid leave; the date and time of

notification by employees resigning or retiring while on military leave or due to disability as verified by a physician; or the date the determination of permanent disability is made by the Consolidated Public Retirement Board and/or the United States Social Security Administration.” Restoration of sick leave for employees returning to eligible employment shall be accomplished in accordance with subsection 14.4.e. of the *Rule*.

According to the provisions of W. VA. CODE §5-16-13(c), you may be eligible to continue insurance coverage for up to three months following your reduction-in-force. Additionally, after expiring any coverage granted by State law, the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), 29 USC Sec. 1162, may provide for an additional period of coverage. You should contact the Public Employees Insurance Agency at 304-558-7850 or 1-888-680-7342 for specific information concerning eligibility, coverage, and premium payment.

You may meet with me or write me concerning this reduction-in-force, providing you do so no later than **[date - at least 15 calendar days after date of letter]**. For any appeal rights you may have, please refer to W. VA. CODE §6C-2-1 *et seq.*, the West Virginia Public Employees Grievance Procedure. If you choose to exercise your grievance rights, you must submit your grievance, on the prescribed form, within fifteen (15) working days of the effective date of this action, to **[name and address of Chief Administrator]** at Level One of the Procedure. As provided in the statute, you may proceed to Level Three of the Procedure by filing your grievance directly with the Public Employees Grievance Board upon the agreement of the chief administrator, or when dismissed, suspended without pay, or demoted or reclassified resulting in a loss of compensation or benefits. You must provide copies of your grievance accordingly to the Public Employees Grievance Board at 1596 Kanawha Boulevard, East, Charleston, West Virginia, 25311; **[agency copy - name and address]**; and the Director of the Division of Personnel, Building 6, Room B-416, State Capitol Complex, Charleston, West Virginia, 25305. Details regarding the grievance procedure, as well as grievance forms, are available at the Board’s web site at www.pegb.wv.gov or you may telephone the Board at (304) 558-3361 or toll-free at (866) 747-6743.

Please let me know if you have any questions.

Sincerely,

[Appropriate Signature Authority]

c: Agency Personnel File
West Virginia Division of Personnel

[OPTIONAL LANGUAGE - *If the employer meets with the employee and hand delivers the letter, the employer may request that the employee verify receipt by signing the following acknowledgment typed at the bottom of the letter.*]

I have received a copy and am aware of the contents of the foregoing letter

Employee Signature

Date

[OPTIONAL LANGUAGE - *If mailed via U. S. Postal Service, the following certification may be typed at the bottom of the letter.*]

The undersigned certifies that the above letter / notification was mailed to **[name]** by first-class and certified mail, return receipt requested, on the _____ day of _____, 20_____.

[signature] _____
[typed name and title]

[NOTE: *Revised 6/2013. Ensure law, rule, and policy language is current.*]