

Contact: Marcia Brunson

**NOTICE OF INTENDED ACTION TO AMEND**  
**IOWA ADMINISTRATIVE CODE 681 — CHAPTER 3**

**Action Requested:** Consider approval to file notice of intended action to amend Chapter 3 “Personnel Administration”.

**Executive Summary:** The Board of Regents administrative rules are contained in 20 chapters of the Iowa Administrative Code. Chapter 3 is commonly known as the “Merit Rules” and contains the employment practices for employees in the Regent Merit System in areas where the collective bargaining agreement with AFSCME is silent or the employees are supervisory or confidential and, therefore, exempted by the Iowa Code. Amendments to three sections of Chapter 3 are proposed as follows.

ITEM 1. Amend 681—3.2 to correct reference to Iowa Code section.

**3.2(8A) Covered employees.** All employees of the board of regents, except those exempted by Iowa Code Supplement section ~~8A.412(3)~~ 8A.412(5), will be covered under the rules of this system.

ITEM 2. Amend 681—3.104(4) to bring the Board’s reduction-in-force rule in compliance with Iowa Code section 8A.402(2g). This code section was amended with the passage of SF 2088, the state government reorganization bill, in the 2010 session of the General Assembly. The rule also reflects revisions to make it more consistent with the reduction-in-force rule for the Department of Administrative Services/Human Resources Enterprise.

**3.104(4) Reduction in force.** Nothing herein shall be construed as a guarantee of hours of work per day or per work period. An institution may lay off an employee when it deems necessary because of shortage of funds or work, a material change in duties or organization or abolishment of one (1) or more positions. Reduction in force will be accomplished in a systematic manner in accordance with these rules; however, the layoff rules established in this subrule shall not apply to:

- Temporary layoffs of less than twenty (20) workdays or one hundred sixty (160) hours of work per calendar year;
- Interruptions in the employment school term employees during breaks in the academic year, during the summer, or during other seasonal interruptions that are a condition of employment, with the prior approval of the resident director;
- The promotion or reclassification of an employee to a class in the same or a higher pay grade;
- The reclassification of an employee’s position to a class in a lower pay grade that results from the correction of a classification error, the implementation of a class or series revision, changes in the duties of the position, or a reorganization that does not result in fewer total positions in the unit that is reorganized;
- A change in the classification of an employee’s position or the appointment of an employee to a vacant position in a class in a lower pay grade resulting from a disciplinary or voluntary demotion

- The transfer or reassignment of an employee to another position in the same class or to a class in the same pay grade.

The individual whose position is eliminated or reduced in hours will be reassigned to a vacant position in the same classification provided the individual can perform the essential functions of the position and possesses any required special qualifications. If there is no vacant position to which the individual can be reassigned, the individual(s) may request and accept layoff with reemployment rights as provided in 3.104(4)“j.” If an individual(s) directly affected does not request layoff with reemployment rights, the reduction in force procedures which follow shall be implemented: ~~Reduction in force will be accomplished in a systematic manner in accordance with these rules; however, the layoff rules established in this subrule shall not apply to temporary layoffs of less than 20 workdays or 160 hours of work per calendar year:~~

- a. Reduction in force will be made by class.
- b. Reduction in force may be made by organizational unit within an institution or institutionwide, as designated by the institution, provided such designation is reported to the merit system director before the effective date of the reduction.
- c. The order of reduction in force will be by type of appointment as follows: temporary, trainee, initial probationary, permanent.
- d. Each permanent employee affected by a reduction in force will be notified in writing of the layoff and the reasons for it at least twenty (20) working days prior to the effective date of the layoff unless budgetary limitations require a lesser period of notice.
- e. There will be competition among all employees in the class affected by the layoff based on a retention points system that will consist of points for length of service and performance evaluation of all employees in the class within the organizational unit or units affected. Retention points will be calculated as follows:
  - (1) Length of service credit will be allowed at the rate of one (1) point for each month of service. Any period of fifteen (15) calendar days of service in a month will be considered a full month. For the purpose of computing length of service credits, the institution will include all ~~continuous~~ periods of regular merit employment during periods of continuous regular appointments with the institution between the date of the original appointment and the date of the layoff or as provided otherwise by law. Periods of leave without pay exceeding thirty (30) days will not be counted.
  - (2) Performance evaluation credit will be allowed at the rate of one (1) point for each month of satisfactory service. No credit will be allowed for service rated less than satisfactory. If there is no record of performance evaluation for a specific time period, it shall be presumed that the employee's performance is satisfactory.
  - (3) Reduction in force retention points will be the total of length of service and performance evaluation.

- f. Employees will be placed on the layoff list beginning with the employee with the greatest number of retention points at top. Layoffs will be made from the list in reverse order unless the employee with the least retention points has special skills and abilities required to perform in the position currently occupied. Employees with greater retention points who must vacate their positions must possess the special skills and abilities required for that position and meet any job related selective certification required for that position. Copies of the computation of retention points will be made available to affected employees. One copy will be retained by the resident director and one copy will be forwarded to the merit system director at least ten (10) days prior to the effective date of the layoff.
- g. When two (2) or more employees have the same total of retention points, the order of termination will be determined by giving preference for retention to the employee with the longest time in the class.
- h. The reduction in force plan approved by the merit system director will be made available by the resident director so that all employees will have access to it.
- i. An affected employee may appeal a reduction in force by filing, within five (5) days after notification as provided in paragraph "d" of this subrule, a written grievance with the resident director (at Step 3 of the grievance procedure provided in 3.129(8A) or at a comparable step of a procedure approved under 3.129(1)). If not satisfied with the decision rendered at that step, the employees may pursue their appeal in accordance with the grievance procedure.
- j. A supervisory employee, defined as a public employee who is not a member of a collective bargaining unit and who has authority, in the interest of a public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees, to direct such public employees, or to adjust the grievances of such public employees, or to effectively recommend such action, may not replace or bump a junior employee not being laid off. For purposes of this subrule, junior employee is defined as an employee with less seniority or fewer retention points than a supervisory employee.

A permanent employee in a non-supervisory class in which layoffs are to be effected may, in lieu of layoff, elect voluntary demotion to a position in the next lower non-supervisory class in the same series utilized at the institution or, in the absence of a lower non-supervisory class in the same series, to a non-supervisory class which the employee has formerly occupied while in the continuous employment of the institution. The employee must possess any special qualifications required and have the ability to perform the essential functions of the position. Such demotion or the occupying of a formerly held non-supervisory class will not be permitted if the result thereof would be to cause the layoff of a permanent employee with a greater total of retention points. To exercise the right of voluntary demotion or to occupy a formerly held non-supervisory classification in lieu of layoff, the employee must notify the resident director in writing of such election not later than five (5) calendar days after receiving notice of layoff. Any permanent employee displaced under these provisions will have the right of election as provided herein.

~~Employees who are laid off or who accept voluntary demotion in a series or assignment to a previously held class in lieu of layoff will, at their request, have~~

~~their names placed on the reemployment eligibility list for the class from which they were laid off for a period of up to two years from the date of layoff.~~

Employees who are laid off or who accept voluntary demotion in a series or assignment to a previously held class in lieu of layoff will, at their request, have their names placed on the reemployment eligibility list for the class from which they were laid off, and lower class(es) in the same series from which they were laid off, and class(es) formerly occupied in accordance with 3.67(8A) to 3.70(8A) for a period of up to two (2) years from the date of layoff. If reemployment occurs within two (2) years of separation due to reduction in force, prior service credit shall be restored. Acceptance of reemployment in a lower class in the same series from which they were laid off or previously held class will not affect the employee's standing on the reemployment list for the class that the employee formerly occupied was laid off from. After two (2) years on the reemployment eligibility list the employee's name shall be removed.

Employees who are qualified to return to work following a medically related disability leave will, at their request, have their names placed on the reemployment eligibility list for the class which they held prior to their medically related disability leave, lower class(es) in the same series of the class which they held at the time their medically related disability leave began, and class(es) formerly occupied in accordance with 3.67(8A) to 3.70(8A) for a period of up to two (2) years from the date they were qualified to return to work. If reemployment occurs within two (2) years of an employee's request to be placed on the reemployment eligibility list when qualified to return to work following a medically related disability leave, prior service credit shall be restored. After two (2) years on the reemployment eligibility list the employee's name shall be removed.

ITEM 3. Amend 681—3.148 to bring the rule allowing an employee to use sick leave for the care of an ill or injured family member in line with similar language in the AFSCME collective bargaining agreement.

**681—3.148(8A) Emergency Family care and funeral leave.** An employing department will, when satisfied by evidence presented, grant an employee time off with pay:

1. Not to exceed three days for each occurrence in the case of death in the employee's immediate family;
2. Not to exceed one day for each occurrence for service as a pallbearer at the funeral of a person not a member of the employee's immediate family; and
3. Not to exceed ~~five days~~ forty (40) hours a year for the ~~temporary emergency~~ care of or necessary attention of ill or injured members of the employee's immediate family ~~for the time necessary to permit the employee to make other arrangements.~~ Employees may carry over up to forty (40) hours of unused emergency care leave to the next year, for a maximum utilization of eighty (80) hours in the next year.

All such time off will be charged to the employee's sick leave and will not be granted in excess of the employee's accrued leave. For the purpose of this rule, immediate family is defined as the employee's spouse, children, grandchildren, foster children, stepchildren, legal wards, parents, grandparents, foster parents, stepparents, brothers, foster brothers, stepbrothers, sons-in-law, brothers-in-law, sisters, foster sisters, stepsisters, daughters-in-law, sisters-in-law, aunts, uncles, nieces, nephews, first cousins, corresponding relatives of the employee's spouse, and other persons who are members of the employee's household.

Upon approval of the notice of intent to file the amendments by the Board, the proposed rule amendments will be submitted to the Governor's Office for review and approval in accordance with the procedure established by Governor Branstad. Upon approval by the Governor's Office, the amendments will be submitted to begin the administrative rules process. The process begins with publication in the Iowa Administrative Bulletin (IAB). The notice will establish a period in which to solicit written public comments concerning the amendments. After the end of the comment period, the comments received will be reviewed. The Board will be asked to adopt the amendments either unchanged from the original notice or changed based upon the comments received. The adopted amendments will again be published in the IAB and will be effective 35 days after the publication of the adopted amendments.

