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**Emergency Rule Adopted to Allow Personnel Management Flexibility**

**TRENTON** -- The New Jersey Civil Service Commission today adopted an emergency rule that gives the State and local governments the ability to achieve budgetary savings through personnel measures short of permanent layoffs of public employees.

The emergency rule permits State and local appointing authorities to implement temporary layoffs, also known as mandatory furloughs, for economy, efficiency or related reasons and allows a temporary layoff to be for one or more days during a defined time period.

The Commission's action came in response to requests from local Civil Service jurisdictions and the State Treasurer for greater flexibility to achieve budget savings through personnel management.

In a Statement of Imminent Peril issued by the Commission, as required by law, to explain the need for an emergency rule, the Commission said its action is necessary because worsening fiscal conditions in New Jersey and the country "give rise to an immediate need for additional civil service regulatory flexibility for public employers to implement appropriate personnel measures and measures short of permanent layoffs."

In the Statement, the Commission said that "without changes to the regulatory framework to allow temporary layoffs, civil service jurisdictions will be forced, by the end of the fiscal year, to engage in layoffs to achieve a level of budgetary relief in the personnel area, with their attendant impact on the health, safety, and welfare of laid-off workers and the public."

The emergency rule, which amends the New Jersey Administrative Code, takes effect as soon as it is filed with the New Jersey Office of Administrative Law and will be in effect for 60 days.

In conjunction with the adoption of the emergency rule, as required by State law, the Commission proposed the identical rule, which will go through an expedited rule-making process, including a 30-day public comment period. Once adopted, that rule will expire on June 30, 2010.

Under the rule, public employers will be required to submit temporary layoff plans to the Civil Service Commission for its review and approval.

The rule gives public employers the ability to define the time period during which a temporary layoff may occur. Public employers also will be allowed to decide if all employees will be temporarily laid off on a single day or if temporary layoff days should be staggered to ensure continuity of service to the public.

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## **STATEMENT OF IMMINENT PERIL**

The State of New Jersey is confronting a fiscal and economic crisis more severe than any experienced since the Great Depression. The State Treasurer indicates that the State's actual and anticipated revenue collections continue to fall far short of last June's fiscal projections, upon which the current budget is premised. So far during Fiscal Year 2009, the State is experiencing a revenue shortfall currently estimated to be in excess of \$2.8 billion. The Treasurer indicates that further significant erosion of State revenue may be inevitable as jobs and purchasing power are lost. Counties and municipalities are also experiencing similar reductions in local revenues. At the same time, these deteriorating economic conditions are forcing increasing numbers of New Jersey residents to seek assistance from the State and local governments. This need for assistance, in turn, requires government to dedicate increasingly scarce resources to meet these obligations, while at the same time attempting to spur economic improvements in order to reverse the deflationary cycle.

In recognition of the scope and severity of the ongoing national and international economic crisis, the federal government in recent weeks enacted what has been described as an unprecedented short-term stimulus law intended to bolster the staggering national economy by creating and retaining more than 3 million jobs. Other federal stimulus legislation to

support the financial industry and other key sectors of the economy has been enacted, and additional legislation to address the home foreclosure crisis has been promised. The federal stimulus package is designed to provide targeted assistance by funding public projects with immediate job impacts, and by providing funds to enhance states' ability to address the immediate needs of their residents. Even with these efforts, the State and its local governments will continue to need to function effectively and address many competing and worthy needs with less revenue for the foreseeable future.

The above-described fiscal crisis, coupled with the intensified demands for public services, and the need to prevent job loss to avoid worsening economic conditions, give rise to an immediate need for additional civil service regulatory flexibility for public employers to implement appropriate personnel measures and measures short of permanent layoffs to address the many interrelated issues arising from the need to continue government services in the current economic situation and hopefully avoid the need for substantial, permanent layoffs. This rule will allow appointing authorities to implement staggered temporary layoffs, treating the layoff as a single action spread out over a defined period of time rather than as a series of discrete layoffs. The rule provides appointing authorities the flexibility to choose the device best suited to address the competing demands of providing necessary services with reduced revenues while not exacerbating the current bad economic situation.

It is vital that any alternative measures to permanent layoffs, such as a temporary layoff program, be as equitable as possible in application so as to preserve jobs, minimize disruption in services, and ensure that the burden does not fall disproportionately on lower-paid positions. Without changes to the regulatory framework to allow temporary layoffs, civil service jurisdictions will be forced, by the end of the fiscal year, to engage in layoffs to achieve a level of budgetary relief in the personnel area, with their attendant impact on the health, safety, and welfare of laid-off workers and the public.

Local civil service jurisdictions have been requesting the regulatory flexibility during this economic downturn to avoid disruption and substantial permanent layoffs while achieving personnel savings from temporary layoffs or furloughs. The inevitable disruption and dislocation that will be associated with significant layoffs under existing rules will undermine the functioning of government and endanger the public health, safety, and welfare.

Without the regulatory flexibility provided by this rule, there will be substantial peril to the health, safety, and welfare of the residents of the State and the economy will be undermined by permanently laying off employees at a time when breaking the cycle of job loss is the top priority for the State and federal governments. Further, such layoffs will deprive New

Jersey residents of important and essential services performed by a trained workforce during precisely the same time period – the midst of a historic fiscal crisis – when those services are most sorely needed. Unless an orderly procedure governing temporary layoffs is adopted immediately, the State and local government units will be faced with implementing layoffs under existing rules in order to achieve needed personnel savings.

The Commission, therefore, promulgates new rules by emergency adoption to avoid the disruption described above. A concurrent rule proposal accompanies this emergent adoption and the Commission will consider comments from all interested parties prior to adoption of the concurrent proposed rules.

## SUBCHAPTER 1. PROCEDURES

### 4A:8-1.1 General

(a) An appointing authority may institute layoff actions for economy, efficiency or other related reasons.

1. Demotions for economy, efficiency or other related reasons shall be considered layoff actions and shall be subject to the requirements of this chapter.

(b) The [Commissioner] Chairperson or authorized representative of the [Department of Personnel] Civil Service Commission shall determine seniority (see *N.J.A.C.* 4a:8-2.4), and shall designate lateral, demotional and special reemployment rights for all career service titles prior to the effective date of the layoff and have such information provided to affected parties.

(c) At no time shall any employee be subject to any layoff action if the employee is on a military leave of absence for active service in the Armed Forces of the United States in time of war or emergency.

**4A:8-1.1A Temporary layoffs**

(a) An appointing authority in State or local service may institute a temporary layoff for economy, efficiency or other related reasons. A temporary layoff shall be defined as the closure of an entire layoff unit for one or more work days over a defined period or a staggered layoff of each employee in a layoff unit for one or more work days over a defined period. A temporary layoff shall be considered a single layoff action even though the layoff of individual employees takes place on different days during the defined period. The defined period shall be set forth by the appointing authority in its temporary layoff plan; however, in a staggered layoff, the maximum period to stagger one day off shall not exceed 45 days.

(b) A temporary layoff pursuant to (a) above may, with the approval of the Chairperson or a designee, be subject to limited exceptions when necessary to ensure continued public health and safety including, but not limited to, child welfare, law enforcement and care for prisoners, patients and other residents in the care or custody of the State.

(c) In a temporary layoff, no employee in the layoff unit, whether career, senior executive or unclassified, shall be paid for any work day that is designated as a temporary layoff day. Any employee who is designated as

exempt from a temporary layoff day pursuant to (b) above shall be paid his or her regular wages for working on that day.

(d) A temporary layoff plan shall be submitted to the Chairperson of the Civil Service Commission or a designee in accordance with *N.J.A.C. 4A:8-1.4* at least 15 days prior to the issuance of temporary layoff notices or such other period as permitted by the Chairperson or a designee. The temporary layoff plan shall describe the implementation of the temporary layoff, including the specific day(s) on which the layoff unit will be closed, any exceptions pursuant to (b) above and, if staggered, the reasons for not closing the entire layoff unit on a specific day and the staffing plan for implementing a staggered temporary layoff. Part-time employees shall be designated for a proportional amount of temporary layoff time, consistent with the ratio of hours worked to full-time employment. In a staggered temporary layoff, the appointing authority shall be permitted, in its sole discretion, to designate as unpaid temporary layoff time any planned or unplanned leave time taken by an employee during the defined layoff period, up to the maximum temporary layoff time for that defined layoff period. Employees shall not be permitted to substitute any paid leave for an unpaid temporary layoff day.

(e) For purposes of accrual of leave time, anniversary dates, paid holidays and seniority, temporary layoff time shall be treated as if the employee is in pay status. An employee serving a working test period shall have the working test period extended for the time equal to the temporary

layoff time. A Federal Family and Medical Leave Act leave or other leave for medical or family reasons shall not be affected by a temporary layoff. An alternate work week program may be suspended for pay periods in which a temporary layoff is implemented.

(f) This temporary layoff rule, *N.J.A.C. 4A:8-1.1A*, shall expire on June 30, 2010.