

CHAPTER 60
SEPARATIONS, DISCIPLINARY ACTIONS AND REDUCTION IN FORCE

[Prior to 11/5/86, Merit Employment Department[570]]

[Prior to 1986, see Executive Council[420] Ch 10]

[Prior to 1/21/04, see 581—Ch 11]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

11—60.1(8A) Separations.

60.1(1) *Resignation, retirement, phased retirement, early retirement, or early termination.*

a. To resign or retire in good standing, an employee must give the appointing authority at least 14 calendar days' prior notice unless the appointing authority agrees to a shorter period. A written notice of resignation or retirement shall be given by the employee to the appointing authority, with a copy forwarded to the director by the appointing authority at the same time. An employee who fails to give this prior notice may, at the request of the appointing authority, be barred from certification or appointment to that agency for a period of up to two years. Resignation or retirement shall not be subject to appeal under 11—Chapter 61 unless it is alleged that it was submitted under duress.

Employees who are absent from duty for three consecutive workdays without proper authorization from the appointing authority may be considered to have voluntarily terminated employment. The appointing authority shall notify the employee of the authority's decision to remove the employee from the payroll. Notification shall be sent to the employee's last-known address, with delivery confirmation required. The appointing authority shall consider requests to review circumstances.

b. Rescinded IAB 8/6/14, effective 9/10/14.

c. Separation from employment for purposes of induction into military service shall be in accordance with 11—subrules 63.6(2) and 63.9(2).

d. A person who has served as a commissioner or board member of a regulatory agency shall not be eligible for employment with that agency until two years after termination of the appointment.

60.1(2) *Expiration of appointment.* When an employee is separated upon the expiration of an appointment of limited duration, the appointing authority shall immediately report the separation to the department on forms prescribed by the director.

[ARC 8692B, IAB 4/21/10, effective 3/29/10; ARC 8727B, IAB 5/5/10, effective 4/16/10; ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 1568C, IAB 8/6/14, effective 9/10/14; ARC 4134C, IAB 11/21/18, effective 12/26/18]

11—60.2(8A) Disciplinary actions. Except as otherwise provided, in addition to less severe progressive discipline measures, any employee is subject to any of the following disciplinary actions when the action is based on a standard of just cause: suspension, reduction of pay within the same pay grade, disciplinary demotion, or discharge. Disciplinary action involving employees covered by collective bargaining agreements shall be in accordance with the provisions of the agreement, if any. Disciplinary action shall be based on any of the following reasons: inefficiency, insubordination, less than competent job performance, refusal of a reassignment, failure to perform assigned duties, inadequacy in the performance of assigned duties, dishonesty, improper use of leave, unrehabilitated substance abuse, negligence, conduct which adversely affects the employee's job performance or the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct, or any other just cause.

60.2(1) Suspension.

a. Suspension pending investigation. An appointing authority may suspend an employee for up to 21 calendar days with pay pending an investigation. A suspension pending investigation may be extended with approval from the director. If, upon investigation, it is determined that a suspension without pay was warranted as provided in subparagraph 60.2(1)"b"(1) below for an employee covered by the premium overtime provisions of the Fair Labor Standards Act, the appointing authority shall recover the pay received by the employee for the imposed period of suspension without pay.

b. Disciplinary suspension. An appointing authority may suspend an employee for a length of time considered appropriate not to exceed 30 calendar days as provided in either subparagraph (1) or (2) below.

A written statement of the reasons for the suspension and its duration shall be sent to the employee within 24 hours after the effective date of the action.

(1) Employees who are covered by the premium overtime provisions of the federal Fair Labor Standards Act may be suspended without pay.

(2) Employees who are exempt from the premium overtime provisions of the federal Fair Labor Standards Act will not be subject to suspension without pay except for infractions of safety rules of major significance, and then only after the appointing authority receives prior approval from the director. Otherwise, when a suspension is imposed on such an employee, it shall be with pay and shall carry the same weight as a suspension without pay for purposes of progressive discipline. The employee will perform work during a period of suspension with pay unless the appointing authority determines that safety, morale, or other considerations warrant that the employee not report to work.

60.2(2) Reduction of pay within the same pay grade. An appointing authority may reduce the pay of an employee who is covered by the overtime provisions of the federal Fair Labor Standards Act to a lower rate of pay within the same pay grade assigned to the employee's class for any number of pay periods considered appropriate. A written statement of the reasons for the reduction and its duration shall be sent to the employee within 24 hours after the effective date of the action, and a copy shall be sent to the director by the appointing authority at the same time.

Employees who are exempt from the overtime provisions of the federal Fair Labor Standards Act will not be subject to reductions of pay within the same pay grade except for infractions of safety rules of major significance, and then only after the appointing authority receives prior approval from the director.

60.2(3) Disciplinary demotion. A disciplinary demotion may be used to permanently move an employee to a lower job classification. A temporary disciplinary demotion shall not be used as a substitute for a suspension without pay or reduction in pay within the same pay grade. An employee receiving a disciplinary demotion shall only perform the duties and responsibilities consistent with the class to which demoted. An appointing authority may disciplinary demote an employee to a vacant position. In the absence of a vacant position, the appointing authority may effect the same disciplinary result by removing duties and responsibilities from the employee's position sufficient to cause it to be reclassified to a lower class. A written statement of the reasons for the disciplinary demotion shall be sent to the employee within 24 hours after the effective date of the action, and a copy shall be sent to the director by the appointing authority at the same time.

No disciplinary demotion shall be made from one position covered by merit system provisions to another, or from a position not covered by merit system provisions to one that is, until the employee is approved by the director as being eligible for appointment. Disciplinary demotion of an employee with probationary status to a position covered by merit system provisions shall be in accordance with rule 11—58.2(8A).

An agency may not disciplinarily demote an employee from a position covered by merit system provisions to a position not covered by merit system provisions without the affected employee's written consent regarding the change in coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement provisions.

60.2(4) Discharge. An appointing authority may discharge an employee. Prior to the employee's being discharged, the appointing authority shall inform the employee during a face-to-face meeting of the impending discharge and the reasons for the discharge, and at that time the employee shall have the opportunity to respond. A written statement of the reasons for the discharge shall be sent to the employee within 24 hours after the effective date of the discharge, and a copy shall be sent to the director by the appointing authority at the same time.

60.2(5) Termination for failure to meet job requirements. When an employee occupies a position where a current qualification for appointment is based upon the required possession of a temporary work permit or on the basis of possession of a license or certificate, and that document expires, is revoked or is otherwise determined to be invalid, the employee shall either be removed from the payroll for failure to meet or maintain license or certificate requirements, or otherwise appointed to another position in

accordance with these rules. This action shall be effective no later than the pay period following the failure to obtain, revocation of, or expiration of the permit, license, or certificate.

When an employee occupies a position where a current qualification for appointment is based upon the requirement of an approved background or records investigation and that approval is later withdrawn or unobtainable, the employee shall be immediately removed from the payroll for failure to maintain those background or records requirements or may be appointed to another position in accordance with these rules.

60.2(6) Appeal of a suspension, reduction of pay within the same pay grade, disciplinary demotion or discharge shall be in accordance with 11—Chapter 61. The written statement to the employee of the reasons for the discipline shall include the verbatim content of 11—subrule 61.2(6).

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 3215C, IAB 7/19/17, effective 7/1/17]

11—60.3(8A) Reduction in force. A reduction in force (layoff) may be proposed by an appointing authority whenever there is a lack of funds, a lack of work or a reorganization. A reduction in force shall be required whenever the appointing authority reduces the number of permanent merit system covered employees in a class or the number of hours worked, as determined by the “full-time equivalent” funding attributed to the position, by a permanent merit system covered employee in a class, except as provided in subrule 60.3(1).

60.3(1) The following agency actions shall not constitute a reduction in force nor require the application of these reduction in force rules:

a. An interruption of employment for no more than 20 consecutive calendar days, with the prior approval of the director.

b. Interruptions in the employment of 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 director.

c. The promotion or reclassification of an employee to a class in the same or a higher pay grade.

d. 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.

e. 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.

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

g. A reduction in the number of, or hours worked by, permanent employees not covered by merit system provisions.

60.3(2) The agency’s reduction in force shall conform to the following provisions:

a. Reduction in force shall be by class.

b. The reduction in force unit may be by agency organizational unit or agencywide. If the agency organizational unit is smaller than a bureau, it must first be reviewed by the director.

c. The appointing authority shall develop a plan for the reduction in force and shall submit that plan to the director for approval in advance of the effective date. The plan must be approved by the director before it can become effective. The plan shall include the reason(s) for and the effective date of the reduction in force, the reduction in force unit(s), the reason(s) for choosing the unit(s) if the unit(s) is smaller than a bureau, the number of permanent merit system covered employees by class to be eliminated or reduced in hours, the cutoff date for length of service and performance credits to be utilized in determining retention points, and any other information requested by the director.

d. The appointing authority shall notify each affected employee in writing of the reduction in force, the reason(s) for it, and the employee’s rights under these rules. A copy of the employee’s retention points computation worksheet shall be furnished to the employee. The official notifications to affected employees shall be made at least 20 workdays prior to the effective date of the reduction in force unless budgetary limitations require a lesser period of time. These official notifications shall occur only after the agency’s reduction in force plan has been approved by the director, unless otherwise authorized by the director.

e. The appointing authority shall notify the affected employee(s), in writing, of any options or assignment changes during the various steps in the reduction in force process. In each instance the employee shall have five calendar days following the date of receipt of the notification in which to respond in writing to the appointing authority in order to exercise the rights provided for in this rule that are associated with the reduction in force.

60.3(3) Retention points. The reduction in force shall be in accordance with total retention points made up of a combination of points for length of service and points for performance record. The director, at the request of the appointing authority, may approve specific exemptions from reduction in force where special skills or abilities are required and have been previously documented in the records of the department as essential for performance of the assigned job functions. An employee with greater retention points who has received a rating of less than “meets expectations” on the most recent performance review given, or who has a disciplinary suspension or demotion within the last 12 months, may be subject to reduction in force before the employee with the next lowest retention points, subject to approval of the director. A cutoff date shall be set by the appointing authority beyond which no points shall be credited. Length of service and performance credits shall be calculated as follows:

a. Credit for length of service shall be given at the rate of one point for each month of employment, including employment credited to the employee during a probationary period. Any period of 15 calendar days of service in a month will be considered a full month. In computing length of service credit, the appointing authority shall include all continuous merit system covered nontemporary service in the executive branch. If a merit system covered nontemporary employee’s employment is interrupted due to (1) a reduction in force, (2) qualification for long-term disability, or (3) a work-related injury, and the employee is subsequently reinstated to the same class in a different layoff unit or to a different class than that held at the time of separation in accordance with rule 11—57.5(8A), and the reinstatement occurs within two years of the interruption of employment, prior service credit shall be restored. Such credit will be subject to a reduction for the period of separation from state service.

Length of service credit shall not include the following periods:

- (1) Any period of temporary or seasonal employment, if not credited toward the probationary period.
- (2) Any period of suspension without pay of 15 days or more.
- (3) Approved leaves of absence without pay in excess of 15 days.
- (4) Any period of layoff of 15 days or more.
- (5) Any period of long-term disability of 15 days or more.
- (6) Any period of unpaid absence that was not subsequently used to establish or adjust the employee’s date of hire.

b. Credit for the performance record shall be calculated using the results of documented performance evaluations completed in accordance with 11—subrule 62.2(2) as follows:

- (1) A performance evaluation period rated overall as “less than competent” or “does not meet expectations” or for which the “overall sum of ratings” is less than 3.00 shall receive no credit.
- (2) A performance evaluation period rated overall as “competent” or better, or “meets or exceeds expectations” or for which the “overall sum of ratings” is 3.00 or greater shall receive one retention point for each month of such rated service.

All employees shall be evaluated for performance in accordance with 11—subrule 62.2(2). If the period covered on the evaluation exceeds 12 months, the rating shall apply only to the most recent 12 months of the period. If the period covered by the evaluation exceeds 12 months and the employee’s overall rating mandates the receipt of no credit pursuant to subparagraph 60.3(3)“*b*”(1), then that overall rating shall apply only to the first 12 months of the period and the remaining months shall be rated as competent. Time spent on FMLA, workers’ compensation, military, or educational leave with or without pay that is required by the appointing authority shall be counted as competent performance.

c. The total retention points shall be the sum that results from adding together the total of the length of service points and the total of the performance record points.

60.3(4) Order of reduction in force. Permanent merit system covered employees in the approved reduction in force unit shall be placed on a list in descending order by class beginning with the employee having the highest total retention points in the class in the layoff unit. Reduction in force selections shall be

made from the list in inverse order regardless of full-time or part-time status, except as provided in subrule 60.3(3). If two or more employees have the same combined total retention points, the order of reduction shall be determined by giving preference in the following sequence:

- a. The employee with the highest total performance record points; and then, if still tied,
- b. The employee with the lower last four digits of the social security number.

60.3(5) Bumping (class change in lieu of layoff). Employees who are affected by a reduction in force may, in lieu of layoff, elect to exercise bumping rights.

a. Supervisory employees, with the exception of supervisory employees of the department of public safety, may not bump or replace junior employees who are not being laid off. For purposes of this subrule, “junior” employee means an employee with less seniority or fewer retention points than a supervisory employee.

b. Employees who choose to exercise bumping rights must do so to a position in the applicable reduction in force unit. Bumping may be to a lower class in the same series or to a lower formerly held class (or its equivalent if the class has been retitled) in which the employee had nontemporary status while continuously employed in the state service. Bumping shall not be permitted to classes from which employees were voluntarily or disciplinarily demoted. Bumping by nonsupervisory employees shall be limited to positions in nonsupervisory classes. Bumping to classes that have been designated as collective bargaining exempt shall be limited to persons who occupy classes with that designation at the time of the reduction in force. Bumping shall be limited to positions covered by merit system provisions and positions covered by a collective bargaining agreement.

The director may, at the request of the appointing authority, approve specific exemptions from the effects of bumping where special skills or abilities are required and have been previously documented in the records of the department of administrative services as essential for performance of the assigned job functions. An employee with greater retention points who has received a rating of less than “meets expectations” on the most recent performance review given, or who has a disciplinary suspension or demotion within the last 12 months, may be subject to reduction in force before the employee with the next lowest retention points, subject to approval of the director.

c. When bumping as set forth in paragraph 60.3(5) “b,” the employee shall indicate the class, but the appointing authority shall designate the specific position assignment within the reduction in force unit. The appointing authority may designate a vacant position if the department of management certifies that funds are available and after all applicable contract transfer and recall provisions have been exhausted. The appointing authority shall notify the employee in writing of the exact location of the position to which the employee will be assigned. After receipt of the notification, the employee shall have five calendar days in which to notify the appointing authority in writing of the acceptance of the position or be laid off.

Bumping to a merit-covered position in lieu of layoff shall be based on retention points regardless of full-time or part-time status and shall not occur if the result would be to cause the removal or reduction of an employee with more total retention points except as provided for in this subrule. If bumping occurs, the employee with the fewest total retention points in the class shall then be subject to reduction in force.

Pay upon bumping shall be in accordance with 11—subrule 53.6(11).

60.3(6) Recall. Eligibility for recall shall be for one year following the date of the reduction in force.

a. The following employees or former employees are eligible to be recalled:

- (1) Former employees who have been laid off.
- (2) Employees who have bumped in lieu of layoff.
- (3) Employees whose hours have been reduced, constituting a reduction in force.

b. Current employees who exercised bumping rights in accordance with subrule 60.3(5) and former employees terminated due to layoff in accordance with subrule 60.3(6) shall only be on the recall list for the class and layoff unit occupied at the time of the reduction in force.

c. The following provisions shall apply to the issuance and use of recall lists:

- (1) Recall lists shall be issued for merit system covered positions and contract-covered positions only.
- (2) When one or more names are on the recall list for a class in which a vacancy exists, the agency must fill that vacancy with a former employee from that list. If no one from a recall list is selected, the agency shall justify that decision to the director before the position may be filled by other methods.

(3) The recall alternatives in (2) above must be exhausted before other eligible lists may be used to fill vacancies.

d. Recall shall be by class without regard to an employee's status at the time of layoff (full-time or part-time).

An employee may remain on the recall list for the same status as that held at the time of layoff after having declined recall to a position with a different status. However, the employee will be removed for the status declined.

e. One failure to accept appointment to a nontemporary position with the same status as that held prior to the reduction in force shall negate all further recall rights.

f. An appointing authority may refuse to recall employees who do not possess the documented special skills or abilities required for a position, with the prior approval of the director.

g. Notice of recall shall be sent with delivery confirmation. Employees must respond to an offer of recall within five calendar days following the date the notice was received. A notice that is undeliverable to the most recent address of record will be considered a declination of recall. The declination of a recall offer shall be documented in writing by the appointing authority, with a copy to the director.

h. Vacation accrual and accrued sick leave of recalled employees shall be in accordance with 11—subrule 63.2(2), paragraph “l,” and 11—subrule 63.3(10), respectively.

i. An employee who bumps in lieu of layoff or has a work hours reduction, and subsequently leaves employment for any reason, shall be removed from the recall list.

j. Employees who are recalled shall be removed from the recall list unless otherwise provided for in these rules.

k. Pay upon recall shall be in accordance with rule 11—53.6(8A).

60.3(7) Reduction in force shall not be used to avoid or circumvent the provisions or intent of Iowa Code section 8A.413, or these rules governing reclassification, disciplinary demotion, or discharge. Actions alleged to be in noncompliance with this rule may be appealed in accordance with 11—Chapter 61.

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¹ Effective date of amendment to 11.1(1) delayed 70 days by Administrative Rules Review Committee. Delay lifted by Committee on 2/8/83. See details following chapter analysis.

² IAB Personnel Department

³ Effective date of amendments to 7.3(1), 7.12(19A), 11.3(1)“a,” 11.3(2)“d” and “e,” 11.3(4), 11.3(5), 11.3(6)“c” and 11.3(6)“l” delayed 70 days by the Administrative Rules Review Committee at its meeting held May 13, 1992; delay lifted by the Committee at its meeting held June 10, 1992. See emergency adopted amendment to 11.3(6)“c” and “d,” 5/27/92 Iowa Administrative Bulletin, pages 2203 and 2204.