

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]

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 by registered letter (return receipt requested) that they must return to work within two workdays following receipt of the notification or be removed from the payroll. If the appointing authority receives notice from the U.S. post office that the letter was undeliverable, the employee may be removed from the payroll five days following receipt of that notice. The appointing authority shall consider requests to review circumstances.

b. A full-time employee who is at least 60 years of age and who has completed at least 20 years as a full-time employee may, with approval of the appointing authority, participate in the phased retirement program. The request for participation shall specify the number of hours per week the employee intends to work for each year of the program.

Participants shall be in pay status a maximum of 32 hours per week and a minimum of 20 hours per week during the first four years in the program. After the completion of four years in the program, participants shall be in pay status a maximum of 20 hours per week for the fifth year in the program. An employee may not increase the number of hours in pay status once participation in the program has begun. An employee may participate for a maximum of five years in the program. At the conclusion of the agreed upon period of participation in the program, the employee shall retire from state employment.

An employee participating in the phased retirement program shall receive holiday pay and accrue vacation and sick leave on a pro rata basis in accordance with the number of hours in pay status in the pay period. During the period of participation in the program, all other benefits shall be commensurate with full-time employment.

Participation in the phased retirement program shall serve as a written notice of intent to retire on the date specified in the agreement unless the employee retires, resigns, is discharged, or receives long-term disability prior to that date. Participants are eligible to elect early retirement or early termination incentives in lieu of completing the phased retirement agreement.

An employee who participates in the phased retirement program shall not be eligible to return to permanent employment for hours in excess of those worked at the time of retirement.

c. Employees who received early retirement or early termination incentives provided by 1986 Iowa Acts, Senate File 2242, shall not be eligible for further state employment.

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

e. 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.

60.1(3) *Early retirement incentive program—1992.*

a. This early retirement incentive program is provided for in 1992 Iowa Acts, House File 2454. To be eligible to participate in this program an employee must be at least 59 years of age at the time of termination, have a total of at least 20 years of continuous or noncontinuous membership service, including buy-back or buy-in service, in the Iowa Public Employees' Retirement System (IPERS) or the Public Safety Peace Officers' Retirement, Accident, and Disability System (POR), and be participating in one of the state's group health or dental insurance plans at the time of termination. Employees on the payroll who meet these criteria and who are receiving workers' compensation are also eligible to participate.

b. To be a program participant, employees must complete an early retirement incentive program application form and send it to IPERS or POR prior to November 15, 1992, and must terminate employment no sooner than May 15, 1992, and prior to January 15, 1993. The IPERS address is P.O. Box 9117, Des Moines, Iowa 50306. The POR address is Wallace State Office Building, Des Moines, Iowa 50319.

c. For participating employees, the state's share of the health insurance premium, or the state's share of the dental insurance premium, or both, will continue to be paid by the state. The amount of the state's share will be capped at the amount that was being paid upon termination. The balance of any premium amounts is to be paid by the participating employee. Prior to or after termination, participants may choose to move to a health insurance plan that has a less costly state's share. If the participant moves to a plan with a less costly state's share, the amount paid by the state will be capped at the state's share for the less costly plan. Thereafter, under no circumstances will a previously reduced or capped state's share rate be increased for any participant. The state's share will then continue at that capped rate through the last day of the month prior to the month in which the participating employee reaches age 65.

d. If a program participant dies before reaching age 65, the state's share of health insurance premium, or the state's share of the dental insurance premium, or both, will continue for the dependents who are listed on the employee's health insurance care contract, dental insurance care contract, or both, through the last day of the month prior to the month in which the program participant would have reached age 65. Dependents may then purchase a conversion policy. Contract status changes, i.e., family to single, may occur for the surviving spouse, if applicable.

e. If a program participant or the spouse of a program participant has an event that would change the contract status from family to single, this change will be allowed. In that case, the state's share of the premium will be reduced to and capped at the single plan rate at the time of the contract change. If a program participant has an event that would change the contract status from single to family, this change will be allowed. However, the state's share of the premium will continue at the capped single plan rate. Under no circumstances will a previously reduced or capped state's share rate be increased for any participant.

f. If a program participant has a double-spouse contribution contract at the time of termination, the double-spouse contribution will continue until the earlier of: the death of either spouse, the dissolution or legal separation of these spouses, the last day of the month prior to the month in which the program participant reaches age 65, or the date the remaining working spouse terminates employment.

g. Under no circumstances will a previously reduced or capped state's share rate ever be increased for any participant for any reason.

h. Employees who participate in this program are not eligible to accept any further employment with the state of Iowa. This prohibition does not apply to a program participant who is later elected to public office.

i. Any employee who participates in this early retirement program and who is later approved for state group disability benefits is exempt from further participation in this program. In addition, the state's share of insurance premiums already paid, from the time of termination until long-term disability payments begin, may be recouped by the state and returned to the department of management for repayment to the originating fund. However, any program participant's payment toward health insurance premiums during that period will be applied toward the employee's cost of the coverage.

60.1(4) Sick leave and vacation incentive program—2002.

a. This termination incentive program is provided for in 2001 Iowa Acts, Senate File 551. To be eligible to participate in this program an employee's length of credited service and the employee's age as of December 31, 2002, but for participation in this program, must equal or exceed 75 years, including buy-back or buy-in service in the Iowa public employees' retirement system (IPERS) or in the public safety peace officers' retirement, accident, and disability system (POR). Employees on the payroll who meet these criteria and who are receiving workers' compensation on and after November 20, 2001, are also eligible to participate.

(1) Age shall be determined in years and quarters of a year.

1. The birth year is subtracted from 2002 to obtain the total years.

2. To calculate quarters:

- If the birth month is January, February, or March, one year shall be added to the total years calculated in 60.1(4) "a"(1) "1";

- If the birth month is April, May, or June, .75 of a year shall be added to the total years calculated in 60.1(4) "a"(1) "1";

- If the birth month is July, August, or September, .50 of a year shall be added to the total years calculated in 60.1(4) "a"(1) "1";

- If the birth month is October, November, or December, .25 of a year shall be added to the total years calculated in 60.1(4) "a"(1) "1."

(2) Length of credited service shall be calculated by IPERS or POR service credit, pursuant to each system's respective rules and regulations.

b. To become a program participant, an employee must complete and file a program application form on or before January 31, 2002, and must terminate employment on or before February 1, 2002.

c. For purposes of this program, the following definitions shall apply:

"Employee" means an employee of the executive branch of the state who is not covered by a collective bargaining agreement, including an employee of a judicial district of the department of correctional services if the district elects to participate in the program, an employee of the state board of regents if the board elects to participate in the program, and an employee of the department of justice. However, "employee" does not mean an elected official.

"Participating employee" means an eligible employee who, on or before January 31, 2002, submits an election to participate in the sick leave and vacation incentive program and terminates state employment on or before February 1, 2002. For the purposes of this program, a person remains a participating employee after payments made hereunder cease.

"Regular annual salary" means the employee's regular biweekly salary on the date of termination multiplied by 26.

d. A participating employee will receive the cash value of the employee's accumulated sick leave, not to exceed 100 percent of the employee's regular annual salary, and annual leave accrued balances. The state shall pay to the participating employee a portion of the combined dollar value of the accrued sick leave and annual leave balances each fiscal year, for a period of five years on the following schedule:

(1) Upon termination, in the first fiscal year of the program, the employee shall receive 10 percent of the total cash value of the aforementioned calculation for sick leave and annual leave.

(2) In August of the second through the fourth fiscal years of the program, the employee shall receive 20 percent of the total cash value of the aforementioned calculation for sick leave and annual leave.

(3) In August of the fifth fiscal year of the program, the employee shall receive the remaining 30 percent of the total cash value of the aforementioned calculation for sick leave and annual leave.

e. A participating employee, as a condition of participation in this program, shall waive any and all rights to receive payment of a sick leave balance pursuant to Iowa Code section 70A.23 and payment for accrued vacation pursuant to Iowa Code section 91A.4 and shall waive all rights to file suit against the state of Iowa, including all of its departments, agencies, and other subdivisions, based on state or federal claims arising out of the employment relationship.

f. The administrative head, manager, supervisor, or any employee of a department, agency, board, or commission of the state of Iowa shall not coerce or otherwise influence any state employee to participate or not participate in this program.

g. In the event a program participant dies prior to receiving the total cash value of the incentive addressed in paragraph 60.1(4)“*d*,” the participant’s designated beneficiary or beneficiaries shall receive the remaining payments on the schedule developed for such payments.

h. An employee who elects participation in this program, from the date of termination from employment, is not eligible to accept any further permanent employment with the state of Iowa. This prohibition does not apply to a program participant who is later elected to public office.

60.1(5) Sick leave and vacation incentive program—Fiscal Year 2003.

a. This termination incentive program is provided for in 2002 Iowa Acts, House File 2625. To be eligible to participate in this program an employee’s length of credited service and the employee’s age as of December 31, 2003, but for participation in this program, must equal or exceed 75 years, including buy-back or buy-in service in the Iowa public employees’ retirement system (IPERS) or in the public safety peace officers’ retirement, accident, and disability system (POR). Employees on the payroll who meet these criteria and who are receiving workers’ compensation on and after July 8, 2002, are also eligible to participate.

(1) Age shall be determined in years and quarters of a year.

1. The birth year is subtracted from 2003 to obtain the total years.

2. To calculate quarters:

- If the birth month is January, February, or March, one year shall be added to the total years calculated in 60.1(5)“*a*”(1)“1”;

- If the birth month is April, May, or June, .75 of a year shall be added to the total years calculated in 60.1(5)“*a*”(1)“1”;

- If the birth month is July, August, or September, .50 of a year shall be added to the total years calculated in 60.1(5)“*a*”(1)“1”;

- If the birth month is October, November, or December, .25 of a year shall be added to the total years calculated in 60.1(5)“*a*”(1)“1.”

(2) Length of credited service shall be calculated by IPERS or POR service credit, pursuant to each system’s respective rules and regulations.

b. To become a program participant, an employee must complete and file a program application form on or before August 14, 2002, and must terminate employment no earlier than July 8, 2002, but no later than August 15, 2002.

c. For purposes of this program, the following definitions shall apply:

“*Employee*” means an employee of the executive branch of the state who is not covered by a collective bargaining agreement, including an employee of a judicial district department of correctional services if the district elects to participate in the program, an employee of the state board of regents if the board elects to participate in the program, and an employee of the department of justice, as well as employees eligible to accrue vacation and sick leave within the judicial branch of the state if the judicial branch elects to participate in the program. However, “employee” does not mean an elected official.

“*Participating employee*” means an eligible employee who, on or before August 14, 2002, submits an election to participate in the sick leave and vacation incentive program and terminates state employment no earlier than July 8, 2002, but no later than August 15, 2002. For the purposes of this program, a person remains a participating employee after payments made hereunder cease.

“*Regular annual salary*” means (1) for full-time employees, an employee’s regular biweekly salary on the date of termination, multiplied by 26; or (2) for part-time employees, the cumulative salary received by the employee during the 26 pay periods immediately prior to termination.

d. A participating employee will receive the cash value of the employee’s accumulated sick leave, not to exceed 100 percent of the employee’s regular annual salary, and vacation accrued balances. The state shall pay to the participating employee a portion of the combined dollar value of the accrued sick leave and vacation balances each fiscal year, for a period of five years on the following schedule:

(1) Upon termination, in the first fiscal year of the program, the employee shall receive 30 percent of the total cash value of the aforementioned calculation for sick leave and vacation.

(2) In August of fiscal years 2004, 2005 and 2006, the employee shall receive 20 percent of the total cash value of the aforementioned calculation for sick leave and vacation.

(3) In August of fiscal year 2007, the employee shall receive the remaining 10 percent of the total cash value of the aforementioned calculation for sick leave and vacation.

e. A participating employee, as a condition of participation in this program, shall waive any and all rights to receive payment of a sick leave balance pursuant to Iowa Code section 70A.23 and payment for accrued vacation pursuant to Iowa Code section 91A.4 and shall waive all rights to file suit against the state of Iowa, including all of its departments, agencies, and other subdivisions, based on state or federal claims arising out of the employment relationship.

f. The administrative head, manager, supervisor, or any employee of a department, agency, board, or commission of the state of Iowa shall not coerce or otherwise influence any state employee to participate or not participate in this program.

g. In the event a program participant dies prior to receiving the total cash value of the incentive addressed in paragraph 60.1(5)“*d*,” the participant’s designated beneficiary or beneficiaries shall receive the remaining payments on the schedule developed for such payments.

h. An employee who elects participation in this program, from the date of termination from employment, is not eligible to accept any further permanent part-time or full-time employment with the state of Iowa. This prohibition does not apply to a program participant who is later elected to public office.

60.1(6) Sick leave and vacation incentive program—Fiscal Year 2005.

a. This termination incentive program is provided for in 2004 Iowa Acts, House File 2497. To be eligible to participate in this program, an employee’s length of credited service and the employee’s age as of December 31, 2004, but for participation in this program, must equal or exceed 75 years, including buy-back or buy-in service in the Iowa public employees’ retirement system (IPERS) or in the public safety peace officers’ retirement, accident, and disability system (POR). Employees on the payroll who meet these criteria and who are receiving workers’ compensation on and after May 21, 2004, are also eligible to participate.

(1) Age shall be determined in years and quarters of a year.

1. The birth year is subtracted from 2004 to obtain the total years.

2. To calculate quarters:

- If the birth month is January, February, or March, one year shall be added to the total years calculated in 60.1(6)“*a*”(1)“1”;

- If the birth month is April, May, or June, .75 of a year shall be added to the total years calculated in 60.1(6)“*a*”(1)“1”;

- If the birth month is July, August, or September, .50 of a year shall be added to the total years calculated in 60.1(6)“*a*”(1)“1”;

- If the birth month is October, November, or December, .25 of a year shall be added to the total years calculated in 60.1(6)“*a*”(1)“1.”

(2) Length of credited service shall be calculated by IPERS or POR service credit, pursuant to each system’s respective rules and regulations.

b. To become a program participant, an employee must complete and file a program application form on or before May 21, 2004, and must terminate employment no earlier than July 2, 2004, but no later than August 12, 2004.

c. For purposes of this program, the following definitions shall apply:

“*Employee*” means an employee of the executive branch of this state, including an employee of a judicial district of the department of correctional services if the district elects to participate in the program, an employee of the state board of regents if the board elects to participate in the program, and an employee of the department of justice. However, “employee” does not mean an elected official.

“*Participating employee*” means an eligible employee who, on or before May 21, 2004, submits an election to participate, and does participate, in the sick leave and vacation incentive program established

by 2004 Iowa Acts, House File 2497. For the purposes of this program, a person remains a participating employee after payments made hereunder cease.

“Regular annual salary” means the employee’s regular biweekly salary on the date of termination multiplied by 26.

d. A participating employee will receive an amount equal to the entire value of the employee’s accumulated but unused vacation plus the lesser of 75 percent of the value of the employee’s accumulated and unused sick leave or 75 percent of the employee’s annual salary. The state shall pay to the participating employee a portion of the combined dollar value of the accrued sick leave and annual leave balances each fiscal year, for a period of five years on the following schedule:

(1) Upon termination, in the first fiscal year of the program, the employee shall receive 30 percent of the total cash value of the aforementioned calculation for sick leave and annual leave.

(2) In August of the second through the fourth fiscal years of the program, the employee shall receive 20 percent of the total cash value of the aforementioned calculation for sick leave and annual leave.

(3) In August of the fifth and final fiscal year of the program, the employee shall receive 10 percent of the total cash value of the aforementioned calculation for sick leave and annual leave.

e. A participating employee, as a condition of participation in this program, shall waive any and all rights to receive payment of a sick leave balance pursuant to Iowa Code section 70A.23 and payment for accrued vacation pursuant to Iowa Code section 91A.4 and shall waive all rights to file suit against the state of Iowa, including all of its departments, agencies, and other subdivisions, based on state or federal claims arising out of the employment relationship.

f. The administrative head, manager, supervisor, or any employee of a department, agency, board, or commission of the state of Iowa shall not coerce or otherwise influence any state employee to participate or not participate in this program.

g. In the event a program participant dies prior to receiving the total cash value of the incentive addressed in paragraph 60.1(6) *“d,”* the participant’s designated beneficiary or beneficiaries shall receive the remaining payments on the schedule developed for such payments.

h. An employee who elects participation in this program is not eligible to accept any further permanent part-time or full-time employment with the state of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

60.1(7) State employee retirement incentive program—Fiscal Year 2010.

a. This state employee retirement incentive program is provided for in 2010 Iowa Acts, Senate File 2062.

b. To become a program participant, an employee must complete and file a program application form on or before April 15, 2010, and must terminate employment no later than June 24, 2010.

c. For purposes of this program, the following definitions shall apply:

“Employee” means an employee of the executive branch of this state, including an employee of a judicial district of the department of correctional services, an employee of the fair board, an employee of the state board of regents if the board elects to participate in the program, and an employee of the department of justice. However, *“employee”* does not mean an elected official.

“Eligible employee” means an employee who is employed on February 10, 2010, who is 55 years of age or older on July 31, 2010, and who has submitted an application by the employee’s last day of employment to the Iowa public employees’ retirement system to begin monthly retirement benefits by July 2010. *“Eligible employee”* shall include an employee who began receiving IPERS monthly benefits prior to February 2010 if the employee is employed on February 10, 2010, and terminates employment on or before June 24, 2010. *“Eligible employee”* shall not include an employee who is eligible for the sick leave conversion program as described in Iowa Code section 70A.23, subsection 4, or a former employee who withdraws the application for monthly retirement benefits from the Iowa public employees’ retirement system before receiving the first month of benefits.

“Participant” means an eligible employee who, on or before April 15, 2010, submits an application to participate and does participate in the state employee retirement incentive program established by this

subrule. For the purposes of this program, a person remains a participant after all benefits under this program have been made.

“*Program*” means the state employee retirement incentive program established in 2010 Iowa Acts, Senate File 2062.

“*State*” means the state of Iowa and all of its branches, departments, agencies, boards, or commissions, including a judicial district department of correctional services and the state board of regents.

d. A participant who elects to remain in the state’s retiree health insurance group plan may receive a health insurance contribution benefit. The health insurance contribution benefit consists of up to 5 years of contributions toward retiree health insurance. The contributions shall be used to pay the employer’s portion of the health insurance premiums. The department shall determine the contribution rate based on the employer’s contribution to an existing state plan.

A participant shall begin receiving the health insurance contribution benefit once payments, if any, under Iowa Code section 70A.23 cease, and shall continue to receive such benefits for 5 years after termination of employment. If a participant is not eligible for payments under Iowa Code section 70A.23, the participant will begin receiving health insurance contribution benefits the month following termination of employment and shall continue to receive such benefits for 5 years after termination of employment.

e. All existing rules and policies regarding continuation of health insurance and changing health insurance plans shall apply to participants and surviving spouses covered by the program.

f. A participant will receive a years of service incentive payment for 5 years after termination of employment. The payments shall include the entire value of the participant’s accrued but unused vacation leave and, for participants with at least 10 years of state employment, \$1000 for each year of state employment, up to 25 years of employment. State employment shall include all past and present employment with the state, regardless of whether the employee took a refund of the contributions made to IPERS for a prior period of service, if the employee provides adequate documentation of prior periods of employment. The payment shall be paid in five equal installments beginning in September 2010 and ending in 2014.

g. If a participant dies within 5 years of termination of employment, the participant’s beneficiary will receive any remaining years of service incentive benefits. If the participant’s surviving spouse is covered on the participant’s state retiree health insurance plan, the surviving spouse may elect to continue health insurance coverage and will receive any remaining health insurance contribution benefits under this program. If the surviving spouse was not covered by the participant’s health insurance plan, or if there is no surviving spouse, any remaining health insurance contribution benefits are forfeited.

h. A participating employee, as a condition of participation in this program, shall waive any and all rights to receive payment for accrued vacation pursuant to Iowa Code section 91A.4 and shall waive all rights to file suit against the state of Iowa, including all of its departments, agencies, and other subdivisions, based on state or federal claims arising out of the employment relationship.

i. The administrative head, manager, supervisor, or any employee of a department, agency, board, or commission of the state of Iowa shall not coerce or otherwise influence any state employee to participate or not participate in this program.

j. A participant is not eligible to accept any further employment with the state, other than as an elected official or a member of a board or commission, from the date of termination from employment. A participant may not enter into a contract to provide services to the state as an independent contractor or a consultant.

k. The state’s obligations and duties under Iowa Code chapter 669 are not altered or diminished by a participant’s signing of the program application and release form. Participants may pursue any remedy allowed in Iowa Code chapter 669 without regard to program eligibility.

[ARC 8692B, IAB 4/21/10, effective 3/29/10; ARC 8727B, IAB 5/5/10, effective 4/16/10]

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 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. Disciplinary action shall be based on any of the following reasons: inefficiency, insubordination, less than competent job performance, 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. If, upon investigation, it is determined that a suspension without pay was warranted as provided in 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 step or 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).

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. An agency shall not implement a reduction in force until it has first terminated all temporary employees in the same class in the reduction in force unit, as well as those who have probationary status in the same class.
- d. 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 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. The appointing authority shall post each approved reduction in force plan for 60 calendar days in conspicuous places throughout the reduction in force unit. The posting shall include the names of all permanent merit system covered employees for each affected job class in the reduction in force unit by retention point order.
- e. 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.
- f. 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. 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 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 approved military leave, workers’ compensation leave, 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. 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. 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 personnel as essential for performance of the assigned job functions.

b. When bumping as set forth in paragraph “*a*” of this subrule, 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 another noncontract class 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. If bumping occurs, the employee with the least total retention points in the class shall then be subject to reduction in force.

Bumping to another class in lieu of layoff from a class covered by a collective bargaining agreement to a class not covered by a collective bargaining agreement, or vice versa, shall only occur if the move

can be accomplished in accordance with the reduction in force order (retention points or seniority date) governing the class into which the employee moves.

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 by certified mail, restricted delivery. 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 2003 Iowa Code Supplement 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.

These rules are intended to implement 2003 Iowa Code Supplement section 8A.413.

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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.