



ZASHIN & RICH

**WORKFORCE REDUCTION, LAYOFFS, FURLOUGHS,
JOB ABOLISHMENTS, and the CARES Act
April 24, 2020**

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Jonathan J. Downes

- **AV Preeminent rated by Martindale Hubbell since 2004.**
- **Fellow in the College of Labor and Employment Lawyers.**
- **Ohio State Bar Association Certified Specialist in Labor and Employment Law.**
- **More than thirty years of experience and expertise in representing public and private employers in labor and employment law and human resource management.**
- **Negotiated over 500 labor contracts.**
- **Represents employers in arbitrations, organizing campaigns, and administrative hearings.**
- **Defends employers in state trial and appellate courts, courts, the Ohio Supreme Court, federal district courts and the United States Court of Appeals for the Sixth Circuit.**
- **Recognized many times over as a subject-matter expert, Jonathan is designated as one of the Best Lawyers, Top 50 Central Ohio Lawyers, and an Ohio “Super Lawyer” every year since 2004.**



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About Zashin and Rich

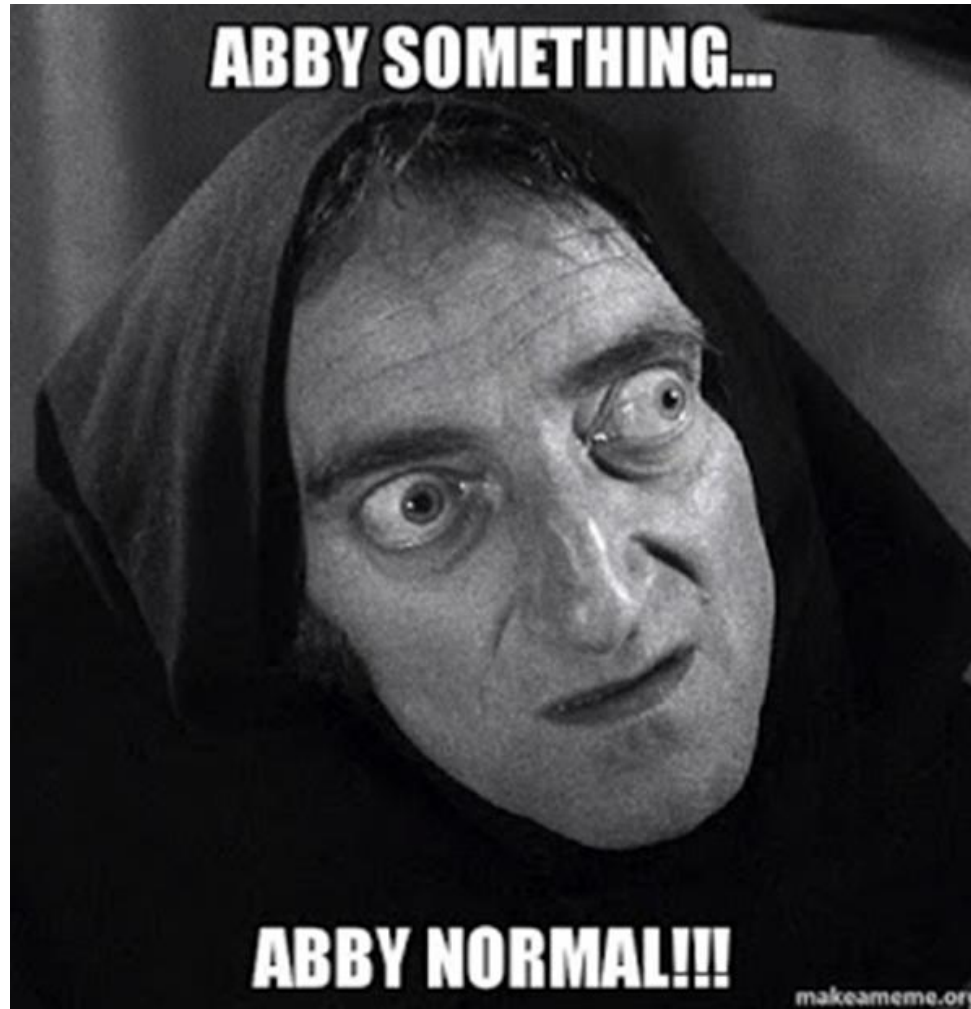
Zashin & Rich Co., L.P.A. (“Z&R”) has over 30 attorneys who specialize in labor and employment law with offices in Columbus and Cleveland, representing both private and public employers.

Z&R represents its clients in labor negotiations, human resources matters, and civil service. Attorneys of Z&R have collectively negotiated over 1000 contracts and have represented private and public employers in arbitrations, impasse proceedings and litigation.

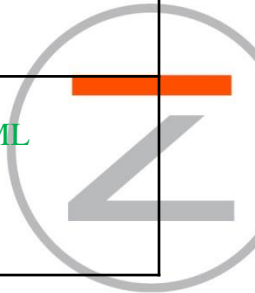
Attorneys represent private employers, universities and colleges, state agencies, special districts, cities, counties, townships, housing authorities, hospitals and others. Attorneys handle matters at the National Labor Relations Board, the State Employment Relations Board, State Personnel Board of Review, and local civil service commissions.



COVID-19 Unknowns



<p align="center">Qualifying Reasons for: Emergency Paid Sick Leave (EPSL)</p>	<p align="center">Weeks 1 and 2 (80 hours)</p>		<p align="center">Weeks 3 through 12 (additional 10 weeks)</p>
<p>1. subject to a Federal, State, or local quarantine or isolation order related to COVID-19</p>	<p>Paid EPSL at regular rate</p>	<p>No EFML</p>	<p>No EFML</p>
<p>2. has been advised by a health care provider to self-quarantine related to COVID-19</p>	<p>Paid EPSL at regular rate</p>	<p>No EFML</p>	<p>No EFML</p>
<p>3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis</p>	<p>Paid EPSL at regular rate</p>	<p>No EFML</p>	<p>No EFML</p>
<p>4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2)</p>	<p>Paid EPSL at 2/3 regular rate</p>	<p>No EFML</p>	<p>No EFML</p>
<p>5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons This is Also the Only Qualifying Reason for Emergency Family Medical Leave (EFML)</p>	<p>Paid EPSL at 2/3 regular rate</p>	<p>Unpaid EFML</p>	<p>PAID EFML at 2/3 regular rate</p>
<p>6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services</p>	<p>Paid EPSL at 2/3 regular rate</p>	<p>No EFML</p>	<p>No EFML</p>



CARES Act - Federal Unemployment

CARES Act -three types unemployment compensation

1. Section 2102 provides Pandemic Unemployment Assistance “PUA” to unemployed persons who would not otherwise been eligible to receive UC benefits (i.e. 1099 workers, gig economy workers).

Requirements: they or a family member diagnosed or have symptoms, etc.; primary for child care; quarantined or advised quarantine; had to quit; place of employment closed; and criteria established by DOL

- Assistance limited to 39 weeks, no waiting period
- Not covered if able to telework or receiving paid benefits



CARES Act – Federal Unemployment

2. Section 2104 Federal Pandemic Unemployment Compensation (“FPUC”)

- an emergency increase in U.C. benefits amount of \$600 per week in addition to an employee’s unemployment compensation by the State
- Eligible if receive \$1 or more in State benefits
- Eligible employees are entitled to FPUC payment until July 31, 2020.



CARES Act – Federal Unemployment

3. Section 2107 Pandemic Emergency Unemployment Compensation “PEUC” provides eligible employees actively seeking work who have exhausted their maximum UC benefits an additional 13 weeks of assistance .
- Under PEUC employees may receive their regular U.C. compensation and the added \$600 per week Federal Pandemic Unemployment Compensation, Section 2104.



CARES Act – Federal Unemployment

Sec 2103 – Relief for Government Entities & Non-Profits (amends Social Security Act 42 USC 1103)

- DOL to issue guidelines to allow States flexibility for reimbursing employers
- DOL will transfer funds to be used exclusively to reimbursement in amounts equal to $\frac{1}{2}$ of benefits paid from March 13 to Dec. 31, 2020.

CARES Act – Shared Work Program



[Jfs.ohio.gov/ouc/SharedWorkOhio](http://jfs.ohio.gov/ouc/SharedWorkOhio)

**online guide:
<http://www.odjfs.state.oh.us/forms/num/JFS20142/pdf/>**

CARES Act – Shared Work Program

Sec. 2108 Shared Work Programs - provides financing for states to implement short-time compensation/shared work programs to help avoid layoffs. Participating employers reduce affected employees' hours in a uniform manner and employees receive unemployment assistance that is proportionate to their reduced hours.

- Limit 26 times amount of reg. UC benefits. Not apply to seasonal or temp employees. Full reimbursement.



CARES Act – SharedWork Program

SharedWork Program FAQ's

Q. Who is eligible to participate in Shared Work?

A. Any contributing or reimbursing employer is eligible.

Q. What is the cost to participate?

A. The CARES Act provides funding for states to apply for 100% reimbursement for benefits paid out during the covid-19 crisis. Ohio is applying for this funding. Currently our State legislature approved a 50% coverage for employers' unemployment compensation benefits.

Q. If we are eligible, can employers still offer insurance to their employees in this plan?

A. Benefits are encouraged to remain intact for employees on SharedWork Ohio and any reduction in benefits must be equal to all employees if on SharedWork or not.



CARES Act – SharedWork

SharedWork Program FAQ's

Q. Does this apply to all workers in an office affected by the Coronavirus issues?

A. Employers provide a list of all employees to be part of their SharedWork Ohio plan. The reduction in work hours should be the same for each unit affected.

Q. Are there any benefits employees/employers would be eligible for from the recently passed coronavirus relief bill?

A. The CARES Act provides an additional \$600/wk in federal compensation for individuals receiving unemployment assistance including SharedWork programs. Those who qualify will be paid retroactively to when their claim was approved.

Mandatory Cost Savings Days and Modified Work Weeks

Mandatory Cost Savings Program (CSP's) ORC §124.393

Townships, cities, and counties may implement mandatory cost savings programs – i.e. furloughs of days off

Modified Work Week ORC §124.394

Townships, cities, and counties may establish a modified work week schedule program.

- Applicable to exempt/non-union employees



Mandatory Cost Savings Days Program

(A) As used in this section:

(1) " Exempt employee" means a permanent full-time or permanent part-time county, township, or municipal corporation employee who is not subject to a collective bargaining agreement between a public employer and an exclusive representative.

(2) "Fiscal emergency" means any of the following:

(a) A fiscal emergency declared by the governor under section 126.05 of the Revised Code.

(b) A fiscal watch or fiscal emergency has been declared or determined under section 118.023 or 118.04 of the Revised Code.

(c) Lack of funds as defined in section 124.321 of the Revised Code.

(d) Reasons of economy as described in section 124.321 of the Revised Code.



Mandatory Cost Savings Days Program

(B) (1) A county, township, or municipal corporation appointing authority may establish a mandatory cost savings program applicable to its exempt employees. Each exempt employee shall participate in the program of mandatory cost savings for not more than eighty hours, as determined by the appointing authority, in each of state fiscal years 2010 to 2013. The program may include, but is not limited to, a loss of pay or loss of holiday pay. The program may be administered differently among employees based on their classifications, appointment categories, or other relevant distinctions.

(2) After June 30, 2013, a county, township, or municipal corporation appointing authority may implement mandatory cost savings days as described in division (B)(1) of this section that apply to its exempt employees in the event of a fiscal emergency.

(C) A county, township, or municipal corporation appointing authority shall issue guidelines concerning how the appointing authority will implement the cost savings program.



Modified Work Schedule

(A) As used in this section:

(1) "Exempt employee" means a permanent full-time or permanent part-time county employee, township, or municipal corporation who is not subject to a collective bargaining agreement between a public employer and an exclusive representative.

(2) "Fiscal emergency" means any of the following:

(a) A fiscal emergency declared by the governor under section [126.05](#) of the Revised Code.

(b) A fiscal watch or a fiscal emergency declared or determined by the auditor of state under section [118.023](#) or [118.04](#) of the Revised Code.

(c) Lack of funds as defined in section [124.321](#) of the Revised Code.

(d) Reasons of economy as described in section [124.321](#) of the Revised Code.



Modified Work Schedule

(B) A county, township, or municipal corporation appointing authority may establish a modified work week schedule program applicable to its exempt employees. Each exempt employee shall participate in any established modified work week schedule program in each of state fiscal years 2012 and 2013. The program may provide for a reduction from the usual number of hours worked during a week by exempt employees immediately before the establishment of the program by the appointing authority. The reduction in hours may include any number of hours so long as the reduction is not more than fifty per cent of the usual hours worked by exempt employees immediately before the establishment of the program. The program may be administered differently among employees based on classifications, appointment categories, or other relevant distinctions.

(C) After June 30, 2013, a county, township, or municipal corporation appointing authority may implement a modified work week schedule program as described in division (B) of this section that applies to its exempt employees in the event of a fiscal emergency

Exempt Employees

“Exempt Employee” means a permanent full-time or permanent part-time county employee, township, or municipal corporation who is not subject to a collective bargaining agreement between a public employer and an exclusive representative.”

O.R.C. § 124.393 (A)(1) and § 124.394 (A)(1)



Statutory Standards Fiscal Emergency

- (A)(2) “Fiscal emergency” means any of the following
- (a) A fiscal emergency declared by the governor under section 126.05 of the Revised Code
 - (b) A fiscal watch or a fiscal emergency declared or determined by the auditor of state under section 118.023 or 118.04 of the Revised Code
 - (c) Lack of funds as defined in section 124.321 of the Revised Code
 - (d) Reasons of economy as described in section 124.321 of the Revised Code

O.R.C. § 124.393 and O.R.C. § 124.394



Fiscal Emergency

O.R.C. §§ 124.393 and 124.394

- Ohio Revised Code § 124.321 (B)(2) defines a lack of funds as a current or projected deficiency of funding to maintain current or to sustain projected levels of staffing.
- Pursuant to O.R.C. § 124.321(D)(2)(a), reasons of economy are based on the appointing authority's estimated amount of savings with respect to salary and benefits.
- A fiscal emergency is defined as when the governor determines that the available revenue receipts and balances in any fund or across funds will likely be less than the appropriations for the year.
- Pursuant to O.R.C § 118.023, the Auditor of State shall issue a written declaration of the existence of a fiscal watch to the municipal corporation, county, or township and the county budget commission upon determining that one or more of the conditions described in section 118.022 of the R.C. are present.



Fiscal Emergency

O.R.C. §§ 124.393 and 124.394

- **Flexibility for appointing authorities within the plan.**
- **Not required to treat all exempt employees the same under the mandatory cost savings plan.**
- **Implemented differently among employees based on their classifications, appointment categories or other relevant criteria.**
- **This same flexibility for various plans is provided under O.R.C. § 124.394 for modified work weeks.**
- **The Ohio Department of Administrative Services (DAS) has implemented rules concerning mandatory CSDs for State employees. The rules do not apply to counties, townships, or municipal corporations, but can be used as guidance for appointing authorities.**



Elements of Cost Savings Days Program

- Each exempt employee shall participate in the program of mandatory cost savings for not more than 80 hours.
- The program may include, but is not limited to, a loss of pay or loss of holiday pay. The program may be administered differently among employees based on their classifications, appointment categories, or other relevant distinctions

ORC 124.393(B)(1)



Cost Savings Days and Modified Work Week - Guidelines

A county, township, or municipal corporation appointing authority shall issue guidelines concerning how the appointing authority will implement the cost savings program.

O.R.C. § 124.393 (C)

Guidelines not required for Modified Work Week



Cost Savings Days vs. Modified Work Week

O.R.C. § 124.393(B)(1) Cost Savings Days	O.R.C. § 124.394(B) Modified Work Week
A county, township, or city may establish a mandatory cost savings program for exempt employees.	A county, township, or city may establish a modified work week schedule program for exempt employees.
Each exempt employee shall participate in the program of mandatory cost savings for not more than 80 hours, as determined by the appointing authority.	Each exempt employee shall participate in any established modified work week schedule program
The program may include, but is not limited to, a loss of pay or loss of holiday pay.	The program may provide for a reduction from the usual number of hours worked during a week by exempt employees immediately before the establishment of the program by the appointing authority.
	The reduction in hours may include any number of hours so long as the reduction is not more than 50% of the usual hours worked by exempt employees immediately before the establishment of the program
The program may be administered differently among employees based on classifications, appointment categories, or other relevant distinctions.	The program may be administered differently among employees based on classifications, appointment categories, or other relevant distinctions.

Elements of Cost Savings Programs

- **Reduction of Biweekly Wages.**
- **Assign Days Off.**
- **Allow Employees to Choose Days Off.**
- **Close Agency on Set Days.**
- **Employees not Receive Holiday Pay.**
- **Use Days in Blocks of Five Days.**
- **Combination.**



Application Of O.R.C. § 124.393

Cost Savings Programs

Guidelines for Cost Savings Plan.

- **Service Credit and Accrual of Paid Leaves Under Cost Savings Plans.**

- The issue of service credit or the accrual of other benefits does not arise under O.R.C. § 124.394 modified work week.

- **Partial Days Off Under Cost Savings Plan.**

- The issue of partial days does not arise under O.R.C. § 124.394, modified work week.



Modified Work Week Schedules

O.R.C. § 124.394

There are no requirements for the establishment of guidelines; however, a policy, rule, or guideline will benefit the communication of the modified schedule.

Alternatives

- 1) Fewer hours per day;
- 2) Fewer days per week; and
- 3) Rotation of staff to maintain hours of operation.



Modified Work Week Terms §124.394

- **Core hours.**
- **Flexible hours.**
- **Credit hours.**
- **Flextime.**
- **Compressed Work Week.**
- **Staggered Shifts.**
- **Holidays not addressed in modified week**



Application Of O.R.C. § 124.393 And O.R.C. § 124.394

- **Reduction of Work Hours - Furloughs and Modified Work Weeks.**
- **Accrual of Leaves – Sick, Vacation, Etc.**
- **Health Insurance Eligibility.**
- **Employer May Treat Employees Differently.**



Voluntary Furloughs Or Reductions In Work Week

- Nothing in O.R.C. § 124.393 impacts the right of an appointing authority to implement a voluntary furlough program for employees.
- In implementing a voluntary furlough program, an appointing authority may go beyond the eighty hours set forth in O.R.C. § 124.393.
- Since it is likely that a voluntary program will go beyond the statutory limitations, an employee should be asked to sign a waiver of appeal or other legal challenge.



Relation To Other Employment Laws

- **Fair Labor Standards Act.**
- **Family Medical Leave Act.**
- **Unclassified Employees.**
- **Collective Bargaining.**
- **Unemployment Compensation.**
- **Workers' Compensation.**
- **PERS.**



Other Fiscal Considerations

- **Payout of Leaves: Sick, Vacation, Compensatory Time.**
- **Step Increase/Promotion.**
- **Consistency with Collective Bargaining Agreements.**
- **Military Leave.**



Appeals

The modified work week program and the cost savings programs are not a modification or reduction in pay that can be appealed to the State Personnel Board of Review (SPBR) or Civil Serviced Commission (CSC) if an affected employee is in the classified civil service.

O.R.C. § 124.34(A).



Forms to Consider

- **Voluntary Furlough Agreement.**
- **Mandatory Cost Savings Days (Furloughs).**
- **Modified Work Week.**
- **Voluntary Work Hour Reduction.**
- **Cost Savings Days Furlough Policy Checklist.**
- **Sample Furlough Guidelines 1.**
- **Sample Furlough Guidelines 2.**



Layoffs and Abolishments

Six basic components

1. Establish the rationale and justification for the layoff.
2. Identify the selection criteria for layoff.
3. Communicate the plan and procedures.
4. Make selection decisions.
5. Review list of affected employees.
6. Notify affected employees.



Procedures For Abolishments And Layoffs

- **O.R.C. § 124.321 to § 124.328.**
 - O.A.C. § 124-7-01 Job abolishments and layoffs and § 123:1-41 Layoffs.
 - O.A.C. provisions do not apply to municipalities.

Police and fire department reductions in force layoffs are governed by O.R.C. § 124.37.



Layoffs of City Police and Fire Department Employees

- **Reasons for layoff and procedure. O.R.C. § 124.37**
- **Displacement by rank**
- **Recall for 3 years**
- **Layoff affirmed, reduction of pay rate.**
 - *Deem v. Fairview Park*, 2011 WL 5507393 (Ohio App. 8 Dist.).
- **Collective Bargaining Agreements.**
 - *State ex rel. OAPSE/AFSCME v. Batavia Local School District Bd. Of Edn.* 89 Ohio St.3d 191, 2000 Ohio 130, 729 N.E.2d 743.
- **City Manpower Ordinance. O.R.C. § 737.05**
- **Fire department layoff by shortest length of service.**



Checklist Of Various CBA Provisions

- **Layoff Provisions**
- **Seniority Provisions – Various Versions**
- **Standard of Proof**
- **Duty to Negotiate/Discuss Layoff**
- **Bumping/Displacement**
- **Hidden Provisions in CBA's**
 - Minimum staffing/manning clauses
 - Zipper clauses
 - Successor provisions
 - Subcontracting provisions (example provisions)
 - Non-discrimination provisions in CBA
 - Choice of civil service or collective bargaining agreement
 - Use of bargaining unit employees



Civil Service Commissions (“CSC’s”)

- **Municipalities must follow the abolishment and layoff provisions O.R.C. § 224.321-124.328**
- **Charter city – may have different procedures.**
- **CSC’s have the authority to promulgate rules for abolishments and layoffs or adopt some or all the rules of State Personnel Board of Review (“SPBR”), using SPBR rules is not recommended for cities.**
 - *Aksterowicz v. Lancaster*, No. 43-CA-88 (5th Dist. Ct. App., Fairfield, 6-7-89).
 - *City of Warren v. Warren Municipal Civil Service Commission*,

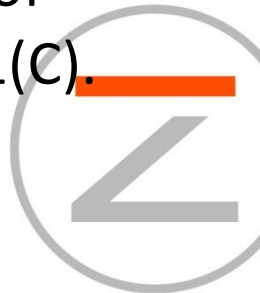


Layoff And Job Abolishment

Reasons O.R.C. § 124.321

Reasons for layoffs.

- Lack of funds - The appointing authority determines there is a current or projected deficiency of funding to maintain current, or sustain projected, levels of staffing and operations.
- Lack of work - The appointing authority has a current or projected temporary decrease in the workload, expected to last less than one year, which requires a reduction of current or projected staffing levels. O.R.C. § 124.321(C).



Reasons For Job Abolishments

O.R.C. § 124.321(D)

“Job abolishment” contemplates the permanent elimination of a specific position while **“layoff”** contemplates the continued existence of a position which is temporarily unfilled because of lack of funds or lack of work.

In re Moreno (Montgomery 1983), 13 Ohio App. 22.

“Abolishment” means the deletion of a position(s) from an organization as a result of a reorganization for the efficient operation of the appointing authority.

- *Penrod v. Ohio Dept. of Admin. Svcs.*, 113 Ohio St. 3d 239 (2007). Employer must show a more efficient operation, not simply doing the same work with fewer employees.
- *Carter v. Ohio Dept. of Health*, 28 Ohio St. 3d 463 (1986). Employer can abolish position and contract for the same services if it is more economical.



Layoff for Reasons of Economy

- **The reasons for economy shall be based on estimated savings of salary, benefits and related cost.**
- **Principles required for abolishments based on savings for salary and benefits only:**
- **Merger and Abolishment: *Sweepston v. Bd. of Tax Appeals of Ohio* (Franklin 1993), 89 Ohio App. 629 – Ct.**
- **For lack of work (permanent).**
 - Lack of work as a basis for the permanent abolishment of positions (and any resulting layoff) anticipates that the lack of work will exceed one year.



Procedures for Layoffs and Abolishment of Positions

- **Appointing authority determines which positions are to be abolished. O.R.C. § 124.321(D)(3).**
- **Procedures For Layoff Apply.**
- **Employer Determines Valid Reason For Layoffs Or Job Abolishment Exists.**
- **Only state agencies, not counties, must file a statement of rationale and supporting documentation with the DAS prior to sending the notice of abolishment. O.R.C. § 124.321(B)(1).
HB 1, July 1, 2009.**



Supporting Documentation for Abolishments and Layoffs

- **Layoff for lack of work** - Documents should provide statistical data covering a reasonable period that indicates the decrease in workload.
- **Layoff for lack of funds** - Documents should show projected revenues and projected expenditures that would then, if continued, result in a projected deficit.
- **Job abolishment** - Documents should explain how the economy or better efficiency can be achieved as the result of reorganization.
 - *Cummings v. Youngstown*, (Mahoning, 1987), No. 86 CA 71.



Procedural and Substantive Rules and Standards for Abolishments

- **Layoffs and abolishments may only be affirmed if the appointing authority has substantially complied with procedural requirements of O.R.C. § 124.321 and the administrative rules.**
- **Certification of, lack of funds or lack of work, not required displacement rights.**



Order of Layoffs Following Abolishments

- 1. The fill an available vacancy within the employee's classification**
- 2. If employee with the fewest retention points shall be displaced**
- 3. If available vacancy in a lower classification in the classification series**
- 4. If fewest retention points in the next or successively lower classification in the classification series**
- 5. If position that employee held within the past 3 years if the employee still meets the minimum qualifications for the position**



Court Application of Standards for Abolishment - Analysis for “Efficiency”

- ***Summit Cty. Children Servs. Bd. v. State Personnel Board of Review*, 2011 WL 2112536 (Ohio App. 10 Dist.). 2011-Ohio-2543.**
- ***McAlpin v. Shirey*, 121 Ohio App. 3d 68. (Ohio App. 1st Dist., 6-25-97).**
- ***Griffith v. Department of Youth Services* (Franklin 1985) 28 Ohio App.3d 76, 502 N.E.2d 239, 28 O.B.R. 117.**



Paper Layoffs O.R.C. § 124.321(e)

Appointing authorities may establish a “paper layoff” process in which employees to be laid off or displaced may be required, before the date of the paper layoff, to pre-select their options for displacing other employees.

O.R.C. § 124.321(E).



Classifications And Order Of Layoff O.R.C. § 124.322

Employer Determines Classifications and Number of Employees for Layoff.

–Statute authorizes the appointing authority to determine the number of employees to be laid off.



Retention Points O.R.C. §124.324(A)

- **Retention Points include:**
 - Length of service (seniority)
 - Merit
 - Efficiency in service

Efficiency in service up to 10% total retention points

- Evaluation system
- Fire special criteria

Merger of City and County functions

- Includes prior service with former employer



Displacement/Bumping Rights Of Laid-off Employees O.R.C. § 124.324 (D)

Order of Displacement for Laid Off Employees.

1. Within classification.
2. Within classification series.
3. Classification held immediately prior, 3 year limit and meet minimum qualifications.



Appointment Categories in Classifications for Order of Layoffs:

1. Part-time Probationary.
2. Full-Time Probationary.
3. Part-Time Permanent.
4. Full-Time Permanent.



Displacement/Bumping Rights of Laid-off Employees O.R.C. §124.324

- **Displacement Within the Same Appointing Authority and Layoff Jurisdiction.**
 - Determination of “appointing authority.”

Notice of Intention to Displace.

- Five days.



Layoff Jurisdiction

- **State – as established by DAS**
- **County – within each appointing authority**
- **City – within each city**
- **Universities – by institution.**



Layoff Lists And Reinstatement Rights

O.R.C. § 124.327

- **Layoff Lists of Employees. O.R.C. § 124.327(A).**
- **Reinstatement Rights of Employees. O.R.C. § 124.327(B).**
 - Reinstatement rights last one year.
 - Reinstatement procedures. O.R.C. § 124.327(D)-(I).
 - Any employee accepting or declining reemployment to the same classification and same appointment type from which the employee was laid off or displaced shall be removed from the appointing authority and jurisdictional layoff list. O.R.C. § 124.327(D) and (E).
 - Employees who do not exercise their displacement rights or decline reinstatement to a position in a lower classification in their classification (not including part-time positions) shall only be entitled to reinstatement in the classification from which the employee was laid off. O.R.C. § 124.327(F) and (G).
 - No probationary period for employee reinstated or reemployed upon reinstatement.

Appeal From Layoff O.R.C. § 124.328

- **Appeals for Classified Employees.**
- **Unclassified employees - no right of appeal.**
- **Time to appeal – 10 calendar days from notice of layoff or abolishment.**



Good Faith Standard and Layoffs

- **Burden to establish good faith - Employer.**
 - *Esselburne v. Ohio Dept. of Agriculture* (Franklin 1988), 49 Ohio App. 37.
- **Burden to establish bad faith – Employer.**
 - *Bispeck v. Trumbull County*, 37 Ohio St. 3d. 26 (1988).



Good Faith Standard and Layoffs

- **Personal or political motivation bad faith.**
 - *Blinn v. Ohio Bureau of Employment Services*, 29 Ohio App. 3d 77 (10th Dist. Ct. App. 1985).
- **Timing of abolishments - bad faith.**
 - *Henschen v. Ohio Dept. of Taxation*, 10th Dist. No. 06AP-341, 2007-Ohio-2528.



Substantial Compliance With Procedures

- ***State ex rel. Potten v. Kuth* (Ohio, 03-19-1980)
61 Ohio St.2d 321, 401 N.E.2d 929, 15 O.O.3d 391.**
- ***City of Warren v. Warren Municipal Civil Service Com'n*, 2002, 2002-Ohio-6929, 2002 WL 31813104, Unreported.**



Thank You and Good Luck!

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