CHAPTER 101. SEPARATION OF EMPLOYEES FROM CLASSIFIED SERVICE

TEMPORARY AND PERMANENT SEPARATIONS

Sec.
101.1. Furlough.

SUSPENSION

101.22. [Reserved].

REMOVAL DURING PROBATIONARY PERIOD

101.32. Rights of promoted employe during probationary period.
101.41. [Reserved].
101.42. [Reserved].
101.43. [Reserved].
101.44. [Reserved].
101.45. [Reserved].

RESIGNATION

101.51. General.
101.52. Notice of acceptance or rejection.
101.53. [Reserved].
101.54. Reemployment after resignation.
101.55. Resignation following leave of absence.

LEAVE OF ABSENCE

101.61. General.
101.62. Extension or renewal of leave.
101.63. Successive leaves of absence.
101.64. Returning employes.
SENIORITY

101.71. Break in service.
101.72. [Reserved].

TEMPORARY AND PERMANENT SEPARATIONS

§ 101.1. Furlough.

(a) Reasons. Furloughs shall occur only because of lack of funds or lack of work.

(b) Preference in retention. An appointing authority will not furlough a regular employee while a probationary, qualifier, provisional, temporary or emergency employee is employed in the same class, in the same furlough unit designated by the appointing authority. An appointing authority will not furlough a probationary employee while a qualifier, provisional, temporary or emergency employee is employed in the same class and furlough unit.

(c) Furlough units. Furloughs will be conducted within approved furlough units. For purposes of this section, a furlough unit shall be defined as all employees in the classification within an affected institution, division, bureau or a combination of the institutions, divisions or bureaus within an agency. Each appointing authority will submit recommended furlough units to the Director. Once approved by the Director, these furlough units will be used for subsequent furloughs. Changes to the approved furlough units shall be submitted to and approved by the Director prior to their use in subsequent furloughs.

(d) Order of furlough. When a furlough is necessary, the last annual or probationary performance evaluations, as applicable, of regular employees in the same furlough unit and class shall be converted to categories or relative ranks. The employees will be placed into quarters, and those in the lowest quarter will be furloughed or returned under subsection (e), in the inverse order of classified service seniority. Seniority for this purpose shall be the length of continuous service if there has been no break in service.

(e) Right of return before furlough. Upon notification of, and until the effective date of furlough, regular employees to be furloughed shall have right of return to vacant positions in the appointing authority in any class and status previously held, or to a class and status in the same or lower levels, if the employee meets the minimum qualifications therefor. Probationary employees will be restored to the eligible list from which appointed or to the class previously held if the probationary status resulted from promotion.
(f) **Mandatory reemployment.** Furloughed employees who are unable to exercise their right of return will be given a mandatory 1-year preference for reemployment in the same class and appointing authority from which furloughed. The preference does not apply to vacancies to which employees on leave of absence have priority of return, or to a filled position which has been reallocated upward after the effective date of furlough.

(g) **Optional reemployment.** Furloughed employees who are unable to exercise their right of return also will be placed, for 1 year, on optional reemployment lists for the class from which furloughed and for equal and lower level classes for which qualified, for certification to all appointing authorities.

(b) **Reemployment certifications.** Requirements for certifications shall be as follows:

(1) Certifications from mandatory reemployment lists shall preclude issuance of certifications otherwise applicable to available vacancies except for certifications from preferred reemployment lists which shall take precedence over all other eligible lists. Certifications from optional reemployment lists shall be considered coequally with all other employment or promotion certifications issued for available vacancies.

(2) Furloughed employees shall be certified from mandatory reemployment lists according to their stated availabilities. The appointing authority will give reemployment preference to those on mandatory reemployment lists with higher overall performance evaluations. In cases of identical performance evaluations, furloughees with greater continuous classified service seniority will have reemployment preference.

(3) Furloughed employees shall be certified from optional reemployment lists according to their stated availabilities. The appointing authority may select any furloughed employee from the optional reemployment list.

(i) **Refusal of mandatory reemployment.** Furloughed employees who refuse reemployment in the same class, location and appointing authority from which furloughed shall forfeit all reemployment preferences, and shall be considered as having voluntarily resigned as of the furlough effective date.

(j) **Refusal of optional reemployment.** Furloughed employees who refuse appointment from an optional reemployment list shall forfeit appointment eligibility for that class and lower level classes, but shall retain mandatory preference and other optional preferences for reemployment. If preferences subsequently are not, or cannot be, exercised, the furloughees shall be considered as having voluntarily resigned as of the furlough effective date.

(k) **Separate reemployment lists.** Separate reemployment lists will be established for State and non-State agencies.

(l) **Furlough under collective bargaining agreement.** If there is a labor agreement covering the employees to be furloughed, the terms of the agreement as to furlough and reemployment procedures shall be controlling.

Notes of Decisions

Furloughs

Substantial evidence existed in the record to support the hearing examiner’s finding that the dean for student services was furloughed for lack of funds, where, despite increased revenue, the university was able to show a budgetary shortfall which necessitated modifications in the system, the university, through the termination of the dean’s position, was able to project a savings of $43,000, and the university was not obligated to adopt the dean’s alternative solutions as the university had a great deal of managerial flexibility in the decision making process. Bumba v. State System of Higher Education, 734 A.2d 36 (Pa. Cmwlth. 1999); appeal denied 757 A.2d 935 (Pa. 2000).

The civil service employe was properly furloughed by the Department as according to the county furloughed unit set up by the Department of which only two people had the same job title and the furloughed employee’s performance evaluation review which was then “due” was the lower of the two. Valence v. Department of Public Welfare, 641 A.2d 644 (Pa. Cmwlth. 1994).

A Department of Labor and Industry’s furlough of a rehabilitation specialist based on lack of work was upheld, where the agency introduced evidence that necessary duties performed by the specialist could be contracted out and the object of the furlough action was the elimination of a position. Stump v. Department of Labor and Industry, 624 A.2d 229 (Pa. Cmwlth. 1993).

The reassignment of two Office of Budget employees at the same time of the furlough of two other Office of Budget employees created a “vacancy,” because a “vacancy” existed under the Civil Service Commission regulations when the reassigned employees would no longer function as assistant comptrollers in their new positions, thus creating a vacancy simultaneous with the furlough action. Roetenberg v. Office of Budget, 550 A.2d 825 (Pa. Cmwlth. 1988).

Since appellant could not show that he was actually injured by the designation of an improper furlough unit, the dismissal of his appeal was appropriate. Pronko v. Department of Revenue, 539 A.2d 456 (Pa. Cmwlth. 1988).

Where employee’s application for lower grade position was submitted prior to notification of furlough and the lower level position was eliminated prior to furlough notification, the employee had no right to the abolished lower position under this section. O’Byrne v. Department of Transportation, 498 A.2d 1385 (Pa. Cmwlth. 1985) (Footnote 3).

The provisions of subsection (c) necessarily require an agency or department to designate furlough units before commencing a reduction in force. Reneski v. Department of Public Welfare, 479 A.2d 652 (Pa. Cmwlth. 1984).


(a) Good cause for suspension is one of the following:

(1) Insubordination.
(2) Habitual lateness in reporting for work.
(3) Misconduct amounting to violation of law, rule or lawful and reasonable Departmental orders.
(4) Intoxication while on duty.
(5) Conduct either on or off duty which may bring the service of the Commonwealth into disrepute.
(6) Similar substantial reasons.

(b) Suspension pending investigation may be instituted for the purpose of ascertaining an employee’s fitness for continued employment.

(1) When the investigation has not revealed cause for disciplinary action, the suspension shall be retracted and expunged from all records, with the employee receiving back pay for the full period of suspension.
(2) When the investigation has revealed cause for disciplinary action, the suspension shall be converted, either in whole or in part, to a disciplinary action.

(c) Suspensions, to include suspensions pending internal investigation, may not exceed an aggregate of more than 60 work days in a calendar year.

(d) An employee suspended, pending investigation by an external agency, may be suspended for the duration of the external investigation and up to 30 consecutive work days after the conclusion of the external investigation.

(e) The Commission may impose a suspension of not more than 120 work days under section 905.2 of the act (71 P. S. § 741.905b).

Source


Notes of Decisions

Arrest of civil service employee of residential facility for adjudicated delinquents on perjury and false swearing charges unrelated to his employment, constituted “good cause” for his suspension pending resolution of the charges; employee’s arrest resulted in the credibility and reputation of the facility being compromised. Woods v. State Civil Service Commission, 912 A.2d 803, 810 (Pa. 2006).

An employee, who received and ignored 40 parking tickets for which an arrest warrant was issued, was discharged for just cause because this disregard for the law adversely affected the image of the agency for which he worked. Office of Attorney General v. Colbert, 598 A.2d 344 (Pa. Cmwlth. 1991); appeal dismissed 619 A.2d 1062 (Pa. 1993).

Where some of the crimes with which the petitioner was charged and arrested related directly to the performance of his duties as a forester, the court held that the appointing authority had good cause for its suspension of the petitioner. Lylo v. Department of Environmental Resources, 477 A.2d 897 (Pa. Cmwlth. 1984).

An arrest for possessing and selling controlled substances may be considered in determining good cause for suspension of the type specified in 4 Pa. Code § 101.21(a)(5), “scandalous or disgraceful conduct while on or off duty which may bring the service of the Commonwealth into disrepute”. Salvati v. Berks County Board of Assistance, 474 A.2d 399 (Pa. Cmwlth. 1984).
An Income Maintenance Worker II with the Department of Public Welfare who was suspended for 30 days after her arrest and arraignment on criminal charges relating to her possession and sale of controlled substances was suspended for good cause as described in subsection (a)(5). Salvati v. Department of Public Welfare, 463 A.2d 1224 (Pa. Cmwlth. 1983); order reaffirmed 474 A.2d 399 (Pa. Cmwlth. 1984).

Failure of a physician to comply with the hospital director’s repeated instructions to prepare a plan to implement unit rounds by staff under the physician’s supervision constitutes insubordination and just cause for suspension, despite physician’s belief that such a program could not be carried out. Gorby v. Department of Public Welfare, 426 A.2d 223 (Pa. Cmwlth. 1981).

Dismissal of a prison guard for possession of marijuana at a State correctional institution is proper, since such conduct violates the parameters of the sensitive position he holds and casts doubt on his competency and ability to execute his duties. Stone v. State Correctional Institution at Graterford, 422 A.2d 1227 (Pa. Cmwlth. 1980).

It was improper to suspend a workmen’s compensation referee on the grounds that he had threatened to “even the score” against an attorney with whom he had had dealings in his status as a private attorney, since there was no evidence that the referee had made such a threat and since he had instead requested that cases involving the attorney be reassigned to another referee. Kanjorski v. Department of Labor and Industry, 403 A.2d 631 (Pa. Cmwlth. 1979).

Evidence in a criminal court proceeding that an employee had committed a crime is sufficient just cause for suspension and termination and the employing agency is not required to conduct its own investigation of the facts. Brown v. Department of Transportation, 383 A.2d 978 (Pa. Cmwlth. 1978).

§ 101.22. [Reserved].

Source


REMOVAL DURING PROBATIONARY PERIOD


An appointing authority shall specify, by written notice, the reasons for removal of an employee before the expiration of the probationary period.

Source


§ 101.32. Rights of promoted employee during probationary period.

The position vacated by an employee serving a probationary period after promotion may not be filled during the period except on a substitute basis, subject to the return of the employee promoted or the successful completion of the probationary term. An employee serving a probationary period which has resulted from a promotion may be removed from the classified service only for just cause.

Source

§ 101.41. [Reserved].

Source

§ 101.42. [Reserved].

Source

§ 101.43. [Reserved].

Source

§ 101.44. [Reserved].

Source

§ 101.45. [Reserved].

Source

RESIGNATION

§ 101.51. General.
A resignation shall consist of a voluntary termination of employment evidenced by written notice containing:

(1) The employee’s signature.
(2) The date of signature and the date the resignation is to take effect.
(3) An affirmative statement of the employee’s intent to resign.

101-7

(302839) No. 354 May 04
§ 101.52. Notice of acceptance or rejection.

(a) Unless the employee is being investigated or removal action is pending, an appointing authority may not reject a written resignation, proper in form, which gives at least 2 weeks’ notice.

(b) The acceptance of a resignation may not bar an appointing authority from giving notice of removal thereafter for causes which occur or become known during the period between the acceptance and the effective date of the resignation.

(c) A written resignation specifying no effective date shall take effect immediately.

(d) Acceptance of resignation shall be evidenced by written notice to the resigning employe within 15 calendar days after the appointing authority’s receipt of the written notice of resignation.

(e) A written resignation may not be withdrawn without the written consent of the appointing authority once it has been accepted, in writing, by the appointing authority.

(f) A resignation submitted, but not yet accepted, in writing, by the appointing authority, may be withdrawn by the employe at any time prior to acceptance or the effective date.
Notes of Decisions

Since the appointing authority may consent to withdrawal of a resignation, refusal by the appointing authority to consent to such withdrawal converted a voluntary quit into an involuntary quit for Unemployment Compensation purposes. Department of Labor and Industry v. Unemployment Compensation Board of Review, 502 A.2d 771 (Pa. Cmwlth. 1986).

§ 101.53. [Reserved].

§ 101.54. Reemployment after resignation.

(a) **Initiation of action.** An appointing authority may make written application to the Director for reinstatement of a former regular status employee to a position in the same or comparable class from which resigned. The appointing authority shall submit a current application of the former employee and certify that, the former employee is in all respects qualified and able to serve in the class involved.

(b) **Approval.** The Director shall approve the request if:

(1) The former employee is qualified for the position sought.

(2) The former employee would derive no greater rights or privileges as a result of reinstatement than if continued as a regular employee or granted a leave of absence without pay.

(3) The rights of persons on reemployment or preferred lists would not be violated by the reinstatement.

(c) **Probationary period after reinstatement.** The appointing authority may waive the probationary period if the former employee returns within 2 years after resignation. If more than 2 years have expired, the reinstated employee shall serve the probationary period prescribed for the class to which returned.

Source


Notes of Decisions

Reinstated referee, who was reinstated after 5 years of retirement, was competent to decide workers’ compensation case. McAfee v. Workmen’s Compensation Appeal Board, 579 A.2d 1363, 1366 (Pa. Commw. 1990).

§ 101.55. Resignation following leave of absence.

A voluntary resignation submitted during or at the termination of a leave of absence shall be effective on the date thereof.

101-9
§ 101.61 General.

(a) A leave of absence may be granted at the discretion of the appointing authority and shall be granted for a definite period, usually in 2 year increments.

(b) Absence on leave for more than 2 years, unless the leave has been extended or renewed as provided in this subsection, shall be deemed the equivalent of a resignation as of the date of termination of the leave. An employee filling a position in the classified service on a substitute basis may, in the discretion of the appointing authority, be granted successive leaves of absence for the duration of the substitute employment aggregating more than 2 years without being required to return to duty between the successive leaves.

(c) This section may not apply to military leave of absence, or to a leave of absence granted to a classified service employee to occupy a position in the Senior Management Service.

Source


Notes of Decisions

An employee who refuses to return to work in her previous position after termination of her leave of absence, but instead requests to return to work in a light work position, is deemed to have resigned if no vacancies in a light work position exist for the employee to assume. Marsh v. Department of Public Welfare, 417 A.2d 862 (Pa. Cmwlth. 1980).

LEAVE OF ABSENCE

§ 101.62 Extension or renewal of leave.

(a) For illness or disability. Leave of absence may be extended beyond the initial period granted by the appointing authority, if the circumstances indicate that illness or disability will render the employee temporarily incapable of efficiently performing the duties of the position at the scheduled termination of the leave.

(b) For military service. Leave of absence granted for military purposes shall extend for the period of service.

(c) For employment in the unclassified service. Leave of absence granted to an employee to take a position in the unclassified service may be renewed for additional periods not exceeding 2 years in each instance, up to a maximum of 12 years after the date the leave commenced.

Source

(d) **For employment in a position in the Senior Management Service.** Leave of absence granted to an employee to take a position in the Senior Management Service shall extend without necessity for renewal, until the employee leaves the Senior Management Service.

**Source**


§ **101.63. Successive leaves of absence.**

An appointing authority may require an employee to serve at least 3 months in a position following a leave of absence without pay aggregating 2 or more years before granting the employee a further leave of absence.

**Source**


§ **101.64. Returning employees.**

(a) An employee’s right of return is not restricted to a vacancy at the geographic location from which leave was granted.

(b) An employee may return to a vacancy whenever available for reemployment during the period of approved leave, if the appointing authority has been given written notice of the employee’s availability.

(c) Priority of return to the class from which leave was granted shall terminate upon the employee’s refusal of reemployment in the class and at the location from which leave was granted.

(d) An employee may return to an appointing authority other than the one from which leave was granted at the discretion of the gaining appointing authority.

**Source**


**SENIORITY**

§ **101.71. Break in service.**

(a) Seniority as used in this part shall be continuous service unless broken by one or more of the following: resignation; retirement; failure to report after noti-
fication of appointment through mandatory, preferred or optional reemployment rights; expiration of mandatory, preferred or optional reemployment rights; or failure to report after leave and acceptance of other permanent employment while on leave of absence without pay. If service is broken for one of these reasons, the employee shall lose accrued seniority. If an employee is returned within 1 year after this type of break in service, the employee is entitled to credit for seniority purposes the time accrued up to the time the break in service occurred, but is not entitled to credit for the time represented by the break in service.

(b) Periods of furlough and approved leave of absence without pay shall be deemed continuous employment for seniority purposes, except that the period of furlough or leave of absence without pay will not be counted toward seniority.

(c) Removal for cause shall terminate accrued seniority. Demotion for cause shall terminate seniority in the class from which demoted.

Source


Notes of Decisions

Break in Service

An employee of the Department of Conservation and Natural Resources failed to provide sufficient evidence to show that his protected activity of filing a lawsuit successfully challenging his dismissal was a substantial or motivating factor for the deprivation of his seniority status upon his reemployment, where the employee did not have seniority when the Department rehired him based on his service prior to his 1988 removal because the break in service for exceeded 1 year. Fultz v. Dunn, 165 F.3d 215 (3d. Cir. 1998); cert. denied 119 S. Ct. 2342 (U. S. 1999).

§ 101.72. [Reserved].

Source