State of Illinois
Department of Human Rights

Technical Assistance Guide for Preparing Layoff Analysis Reports for Illinois State Executive Agencies

March 2016

Illinois Department of Human Rights
Technical Assistance Guide for Preparing a Layoff Analysis Report

State executive agencies anticipating the need to layoff employees are required to evaluate the projected layoff for adverse impact on employees who are members of an affirmative action group. The completed impact analysis must be submitted to the Department of Human Rights (DHR) thirty (30) days prior to the effective date of the layoff (see page 6). This document sets forth the procedures to be followed by state executive agencies.

ADVERSE IMPACT

Adverse impact (also known as "disparate impact") is deemed to exist where employer personnel decisions disproportionately burden affirmative action group members.

The Department has determined that, for purposes of this analysis only, adverse impact shall exist within any job category and within any region when the layoff rate of the comparison group is less than eighty percent (80%) of the layoff rate of affirmative action group members.

This is a restatement of the "four-fifths rule" adopted as a measure of adverse impact in the Uniform Guidelines on Employee Selection Procedures promulgated jointly by the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP) in 1978 (CFR T41 Ch 60 Part 60-3).

KEY TERMS

The term "job category" shall mean one of the eight EEO job categories used by state executive agencies in affirmative action plans (Officials and Administrators, Professionals, Technicians, Protective Service Workers, Paraprofessional, Administrative Support, Skilled Craft Workers, and Service-Maintenance).

The term "region" shall mean a group of adjacent counties. There are 10 regions within Illinois.

The term "affirmative action group member" shall mean a person who belongs to one or more of the following groups: Black or African American, Hispanic or Latino, Asian, American Indian or Alaskan Native, Native Hawaiian or Other Pacific Islander, Women, or People with Disabilities.

The term "Person with a Disability" shall mean a person who has identified a disability through the online survey process. A person who has not identified a disability through the survey process shall be considered "Person with no Disability." (Disability Survey Form)

The term "comparison group," when used for purposes of comparison with affirmative action group members, shall mean as follows:

AFFIRMATIVE ACTION GROUP	COMPARISON GROUP
Black or African American	White
Hispanic or Latino	White
Asian	White
American Indian or Alaskan Native	White
Native Hawaiian or Other Pacific Islander	White
Women	Men
Person with a Disability	Person with no Disability

PROCEDURES FOR PREPARING THE LAYOFF REPORT

I Collect Relevant Layoff and Workforce Data.

A. Obtain complete and accurate information regarding all projected layoffs. The information must include the job category, position title, region, comparison group, and affirmative action group of persons to be laid off.

B. Obtain the most current information regarding the agency's workforce (DHR-9) broken down by region, job category, race, sex and disability.

II Layoff Procedures

A. When there are **at least 30 incumbents** in the EEO job category within a particular DHR region in which a layoff will take place **and** there are **at least 5 members of a specific affirmative action group** in that EEO job category in that region who are targeted for layoff (e.g., 5 Black or African Americans, 5 Hispanic or Latinos, 5 Asians, 5 American Indians or Alaskan Native, 5 Native Hawaiian or Other Pacific Islanders, 5 Women, 5 People with Disabilities), a complete adverse impact report with a statistical analysis is required. (Proceed to Section III of this document.)

B. When there are **fewer than 30 incumbents** in an EEO job category within a particular DHR region in which a layoff will take place **or** there are **fewer than 5 members of any affirmative action group** in that EEO job category in that region who are targeted for layoff, the following documents must be submitted (note that if there are 30 incumbents and 5 members of a specific affirmative action group, then a statistical analysis must be prepared for that group):

1. The Certification Sheet (LO-1);

2. The Projected Layoff Summary Form (LO-2);

3. A narrative;

4. The agency's layoff plan, consisting of a list of all employees to be laid off, identifying region, job title, and affirmative action group(s) to which the persons belong;

5. A Summary Workforce Analysis (DHR-9) for the region of the layoff.

III Complete the Projected Layoff Analysis Form (LO-3)

A. In the upper right corner, enter the agency name, the region and the affirmative action group for which the analysis is being performed.

B. In Column 2, enter the total number of employees in the job category prior to layoff.

C. In Column 3, enter the total number of persons to be laid off in the job category.

D. In Column 4, enter the total number of affirmative action group incumbents employed in the job category.

E. In Column 5, enter the number of affirmative action group incumbents to be laid off in the job category.

F. In Column 6, enter the affirmative action group layoff rate, which is computed by dividing Column 5, by Column 4. In this and all other calculations, round off to two places after the decimal point (for example: 1.077 = 1.08, 1.073 = 1.07 and 0.699= 0.70).

G. In Column 7, enter the total number of comparison group incumbents employed in the job category.

H. In Column 8, enter the number of comparison group incumbents to be laid off in the job category.

I. In Column 9, enter the comparison group layoff rate, which is computed by dividing Column 8, by Column 7.

J. In Column 10, enter the impact ratio, which is computed by dividing the comparison group layoff rate (Column 9) by the affirmative action group layoff rate (Column 6).

K. In Column 11, enter "YES" if the impact ratio is less than .80. Enter "NO" if the impact ratio is equal to or greater than .80.

L. If there are no layoffs in the category, leave columns 4-11 blank.

M. Total Columns 2, 3, 4, 5, 7, and 8.

EXAMPLE OF ADVERSE IMPACT ANALYSIS

The Department of Space Exploration (DSE) anticipates the need to layoff 30 out of the 75 Technicians it employs in Region 1. Fifteen (15) of the persons to be laid off are Women while 15 are Men. Twenty (20) of the incumbent Technicians in Region 1 are Women while 55 are Men. DSE's EEO/AA Officer is asked to determine whether this layoff adversely impacts Women.

The EEO/AA Officer begins by calculating layoff rates for the two groups involved. The layoff rate is calculated by dividing the number of persons laid off by the number of incumbents.

$$\frac{\text{Number of Women laid off}}{\text{Number of Women incumbents}} = \frac{15}{20} = .75$$

$$\frac{\text{Number of Men laid off}}{\text{Number of Men incumbents}} = \frac{15}{55} = .28$$

The next step for the EEO/AA Officer is to compare the two-layoff rates. The comparison is called the Impact Ratio and is obtained by dividing the comparison group (Men) layoff rate by the affirmative action group (Women) layoff rate.

$$\frac{\text{Comparison group layoff rate}}{\text{Affirmative action group layoff rate}} = \frac{\text{MEN}}{\text{WOMEN}} = \frac{.28}{.75} = .38$$

Because .38 is less than .80, adverse impact on Women is indicated in this layoff selection process under the four-fifths rule.

IV Complete Certification Sheet (LO-1)

Form LO-1 must be completed and submitted with the Layoff Report. It must be dated and signed by both the Agency EEO/AA Officer and the Agency Chief Executive Officer.

V Complete the Summary Form (LO-2)

A. Enter the agency name, analysis date and the source of the workforce data in the upper right hand corner.

B. Enter the total number of employees before layoff in each region and the total number of projected layoffs in each region and total those columns.

C. Enter the number of persons to be laid off in the appropriate box under the heading “Number of Persons Laid Off” and total those columns.

D. Based on the results of the LO-3 analysis place a check in the appropriate box(es) where adverse impact has been identified in a region for any affirmative action group.

VI Prepare an Explanatory Narrative

A narrative must be written for the layoff plan containing the following information, including but not limited to:

- The reasons for selecting the targeted positions for layoff;
- Any provisions of the State of Illinois Personnel Code, Personnel Rules, and/or a Collective Bargaining Agreement governing a layoff;
- If the layoff decision(s) were made by seniority date, explain any exception(s) and the reason(s) they were made;

- Any alternatives that were available to and considered by the agency to laying off the affected employees;
- A discussion of any significant impact the layoff would have on a specific affirmative action group. For example, if the agency only has two Asians, and the layoff would affect one of them, the narrative should discuss this situation. Or if there is only one Woman Official and Administrators, and she is going to be laid off, the narrative should mention this impact.

NOTE: If the report is being submitted less than 30 days prior to the effective date of the layoff, the narrative must set forth the emergency situation necessitating the layoff.

VII <u>Contents for the Layoff Report</u>

A. When there are **at least 30 incumbents** in the EEO job category within a particular DHR region in which a layoff will take place **and** there are **at least 5 members of a specific affirmative action group**, the completed projected layoff report shall contain the following:

1) The Certification Sheet (LO-1);
2) Projected Layoff Summary Form (LO-2);
3) The Projected Layoff Analysis Form (LO-3) for each Department region and affirmative action group affected;
4) The narrative;
5) The agency's layoff plan, shall identify, by region, job title and affirmative action group(s) the employees to be affected by the layoff;
6) Submit summary workforce analysis (DHR-9) for the region that has the layoff.

B. When there are **fewer than 30 incumbents** in the EEO job category within a particular DHR region in which a layoff will take place **or** there are **fewer than 5 members of a specific affirmative action group**, the completed projected layoff report shall contain the following:

1) The Certification Sheet (LO-1);
2) Projected Layoff Summary Form (LO-2);
3) The narrative;
4) The agency's layoff plan, shall identify, by region, job title and affirmative action group(s) the employees to be affected by the layoff;
5) Submit summary workforce analysis (DHR-9) for the region that has the layoff.

The following are citations from the Illinois Human Rights Act and from the Illinois Administrative Code which address the issue of employee layoffs:

Illinois Compiled Statues; Illinois Human Rights Act;
775 ILCS5/ARTICLE 2. Employment
Section 2-105 EEO/AA

Section 2-105 (B) State Agencies.

(6) Notify the Department 30 days before effecting any layoff. Once notice is given, the following shall occur:

(a) No layoff may be effective earlier than 10 working days after notice to the Department, unless an emergency layoff situation exists.

(b) The State executive department, State agency, board, commission, or instrumentality in which the layoffs are to occur must notify each employee targeted for layoff, the employee's union representative (if applicable), and the State Dislocated Worker Unit at the Department of Commerce and Community Affairs.

(c) The State executive department, State agency, board, commission, or instrumentality in which the layoffs are to occur must conform to applicable collective bargaining agreements.

(d) The State executive department, State agency, board, commission, or instrumentality in which the layoffs are to occur should notify each employee targeted for layoff that transitional assistance may be available to him or her under the Economic Dislocation and Worker Adjustment Assistance Act administered by the Department of Commerce and Community Affairs. Failure to give such notice shall not invalidate the layoff or postpone its effective date.

Department Of Human Rights Rules & Regulations;
Title 56: Labor and Employment
Chapter II: Department of Human Rights
Subpart H: EEO/AA by State Executive Agencies
Section 2520.770 Reporting and Record-Keeping

Section 2520.770 (f) Layoff Reports — Each agency shall prepare a layoff report outlining any intended layoff of incumbent employees. The report shall be submitted to the agency's EEO Officer and the Department [of Human Rights] not less than 30 days prior to the expected date of the layoff, unless emergency conditions necessitate a delay of the report; however, such conditions must be documented in the report. The report shall identify, by geographical location, job title and affirmative action group, the employees to be affected by the layoff. The agency's EEO Officer shall review the report to determine if the layoff will have an adverse impact upon minorities, women or disabled persons. The EEO Officer shall submit a written adverse impact report to the Chief Executive Officer and to the Director [of the Department of Human Rights] of his/her findings and, if adverse impact is found, suggested alternatives to lessen or eliminate such impact. The Director of Central Management Services will not approve a layoff until the Director [of the Department of Human Rights] has indicted that the adverse impact report is correct.