

# REDUCTIONS IN FORCE

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## A MANAGER'S GUIDE



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## **REDUCTIONS IN FORCE—A MANAGER’S GUIDE**

Reducing the workforce—laying off employees—is a decision made by agency management, the Division of the Budget, State Operations, and in some cases, the State Legislature. The reduction in force process, however, is governed by State law and policy and by provisions in the collective bargaining agreements between the State and the employee unions.

As an agency manager, you may need to consider reducing your workforce to meet budget constraints. It is important that you carefully consider how to accomplish a reduction in force, analyzing not only the impact on agency programs and services, but the effect on the remaining workforce: whether the remaining employees have the ability to continue to carry out the mandates of the agency. Sound operational and defensible reasons for elimination of positions is essential to maintaining service delivery and employee morale.

Also critical is effective communications. During uncertain fiscal times, employees, as well as an agency’s customers, need regular, clear, concise communications regarding the status of reductions to help keep anxiety at a minimum. Exhibition of “crisis mode” behaviors, an atmosphere of secrecy, and/or a lack of communication gives rise to unfounded rumors and speculation.

Another vital issue is assembling and maintaining adequate records. As explained below, through a Question & Answer format, the reduction in force (RIF) process is extremely complicated. Every employee’s state employment history and status must be reviewed and verified. Triple checking every detail should be common practice and maintaining records documenting the appropriateness of employees’ status changes is critical. Just as it is imperative to ensure that all appointments are legal, it is even more important to ensure that a termination or demotion is legally justified.

Another consideration in any reduction in force is the agency's responsibility to promote a diversified workforce. Cuts should be avoided that would unduly affect employees in protected classes. Your affirmative action officer (AAO) will assist you in analyzing your current workforce and in planning any necessary reductions.

Please remember that you need to work closely with your Human Resources Management (HRM) office throughout the entire process from planning through execution. These professionals can help you to understand, for example, why or how a specific program came into existence, why one title is more appropriate for elimination than another, and how, when, and whom to communicate with—employees, unions, and other state agency representatives. Your HRM Office has the expertise and resources to answer questions about reductions in force and to advise on the effects on agency employees of proposed cuts. HRM is also responsible for maintaining personnel records and for the actual administration of any staff reduction. During any reduction in force, HRM works closely with the Department of Civil Service and other agencies to ensure that employees' civil service rights are protected. It is imperative that HRM is included in planning for workforce reductions.

HRM staff will be responsible for verifying all employee transactions, answering employee questions, ensuring benefits, and helping those left behind to deal with operational and personnel issues.

Here are a number of questions and answers about reductions in force that will illustrate and explain the process.

1. What is a RIF?

A Reduction in Force (RIF) or layoff is the separation or demotion of permanent employees resulting from the abolition of positions.

2. What is an abolition of positions?

Agency management, in conjunction with the Division of the Budget, may determine that certain positions (items, line items, jobs) are no longer necessary to support the agency mission, or that there is insufficient funding to support certain positions. Agency management and the DOB agree on which specific positions are to be abolished. The agency then submits an electronic transaction to formally remove the position. If the position is filled, a RIF may occur.

3. What rights do employees have if their positions are abolished?

Layoff rights (retention rights) are primarily determined by status (permanent, contingent permanent, probationary, temporary, etc.) and seniority (continuous service in the classified service of the State). Generally, more senior permanent employees have retention rights over less senior permanent employees in the affected title being abolished. Employees who are on probation have lesser retention rights than those who have completed probation in the title. Non-permanent employees have no right to their positions but may have other options, such as returning to a hold item. There are different rules for retention in different jurisdictional classes.

In a retreat or bumping situation, a permanent employee whose position is abolished may have the right to displace an employee serving in a position in a *different title* if that second employee has inferior retention rights.

4. Who has retention rights?

Retention rights are determined by appointment status and seniority, with permanent employees having greater rights than provisional and temporary employees. Permanent employees who are probationers have fewer retention rights than employees who have completed their probation in the same title. Among permanent probationers (and permanent employees who have completed probation) holding the same title, retention rights are determined by seniority in the classified service. The classified service is comprised of the four jurisdictional classes specified in the Civil Service Law: the exempt class (appointed or “at will” employees), the non-competitive class (employees who must meet established minimum qualifications before appointment); the competitive class (employees who must compete in examinations for their jobs); and the labor class.

5. How long does it take to lay off people? What is the time line?

The Department of Civil Service advises that planning and conducting a layoff can as long as take sixteen weeks from the identification of positions to be abolished.

6. Why does the process take so long?

Once management has determined which positions in which programs are to be eliminated a number of administrative actions must begin. For example, seniority rosters must be produced, employee information confirmed (veteran’s status, appointment dates, addresses), retention status compared among employees in the title(s) (not necessarily *only* titles in which abolitions occur), unions must be notified, and voluntary reemployment lists established [see question below]. If the abolitions are statewide or involve many employees, the process can be more complicated and time-consuming. Employees are required to have twenty days’ notice before separation or demotion (layoff). [The Department of Civil Service can provide a detailed timeline of the process.]

7. Why is the process so complicated?

In the 1970's, the State Civil Service Law and Rules for the Classified Service were amended to establish processes and protocols to govern the layoff and reemployment of permanent staff in the competitive and non-competitive jurisdictional classes. The law establishes and defines layoff units, retention status and priority, how seniority is determined and the order of displacement of permanent staff (staff with less retention status are displaced by employees with superior retention rights). The law provides that permanent employees may displace less senior employees who serve in lower level direct-line titles.

8. What other agencies are involved in the RIF process?

The Governor's Office and DOB are involved in establishing agency missions and priorities; technically DOB abolishes positions submitted by the agency; the Department of Civil Service provides seniority rosters, technical support, and reemployment services; employee unions must be advised of any impending layoffs of members; and the Governor's Office of Employee Relations oversees related labor relations issues.

9. If my agency is statewide and one layoff unit, can I change that to make separate geographic layoff units?

The President of the Civil Service Commission has the authority to change layoff units; GOER and the employee unions must be part of the review process. Your HRM Office would need to confer with GOER and the unions and make an official request to the Civil Service Commission.

10. Is it true that abolishing one job could affect several employees?

Yes . A RIF often "cascades"—employees in positions that are abolished may displace employees in other positions (that are not being abolished); these employees in turn may affect other employees in other positions. A "rule-of-thumb" is that three employees are affected for every filled position abolished.

11. Do I have to let the least senior people go even though they do better jobs than other employees with more seniority?

Yes. The order of separation or displacement is established in statute. Employees are laid off in order of seniority in the classified service. Temporary or provisional employees must be let go before permanent employees lose their jobs. [See above: retention rights]

12. Can an employee on leave of absence always return to a hold item during a reduction in force?

Employees on probationary leave, or employees on leave to serve in temporary or provisional status may return to hold items at their discretion. Employees who are contingent permanent and who have completed probation and whose original positions are held for them may not return to their hold items at their discretion.

13. What is bumping?

Bumping is the common term (it is not used in the law) for “vertical displacement” used to describe an employee with greater retention rights displacing an employee with fewer rights who holds a lower-grade title in a direct line of promotion. [Terminology is important: employees may use the term “bump” to refer to any displacement of one employee by another—e.g., within a title class (horizontal reassignment) or to a previously held position (reinstatement from leave, retreat).] Vertical displacement—bumping—is available only for competitive class employees.

14. What is retreating?

If a permanent employee facing layoff is in a position that has no opportunity for bumping (vertical displacement)—that is, there are no occupied positions in a lower graded title in the direct promotion line—the employee may be able to displace an employee in a title the laid off employee last served on a permanent basis, provided the title is at a lower salary grade, the employee’s service was

satisfactory, and the employee has greater retention standing than the employee to be displaced.

15. What are “direct line” titles?

In the competitive class, there are title series, generally of increasing responsibility and salary allocation ( for example, Sr. Personnel Administrator, Associate Personnel Administrator, Assistant Director of Personnel, Director of Personnel). A series of titles that shares a generic root (Personnel Administrator) constitute a direct line for promotion.

16. What layoff rights do the top managers in an agency have? Can their positions be abolished?

Presumably, any position that is not mandated by statute can be abolished. If the managers are permanent competitive class employees, they will have the retention and displacement rights as described above. [Do not confuse the Managerial/Confidential bargaining unit designation with “at-will” or “at-pleasure” employees in the exempt jurisdictional class or with non-competitive class positions designated as policy-influencing or confidential.] However, not every permanent employee has retention rights. Exempt class employees and employees in non-competitive class positions designated as confidential or policy-influencing (“phi-tagged”) generally do not have retention rights. These employees serve at-will and may be dismissed at any time. However, there are two important exceptions to this: some exempt or non-competitive class employees in reclassified positions may have tenure protection that accrued to them as individuals if they had such rights prior to their reclassification of their positions; and permanent employees in the classified service, regardless of jurisdictional class, who have completed probation and who meet the criteria of §75(1)(b)CSL (i.e., who are wartime veterans [see §85 CSL] or who are exempt volunteer firefighters [see the General Municipal Law]) have the tenure protection afforded by that section unless they hold the position of "private secretary, cashier or deputy of any official or department."

17. Can anything be done to help employees find jobs before they are laid off?

The Civil Service Law provides for the establishment of Agency Reduction Transfer Lists (ARTL). Employees serving in titles in agencies that are anticipating an abolition of positions may elect to place their names on these transfer lists. These employees must be considered for employment in comparable positions in other agencies. Generally, the ARTL process may begin six months prior to an anticipated abolition of positions. This program is open to permanent employees only.

## **GLOSSARY OF COMMON LAYOFF TERMS**

Below are some of the terms commonly used in reduction in force situations. These definitions are necessarily simplified.

### **ABOLITION OF POSITIONS**

The abolition of positions is a prerequisite to the termination of permanent employees in the classified service for the reason of economy. Agencies may not lay off employees without abolishing positions.

### **AGENCY REDUCTION TRANSFER LIST**

A mandatory list established prior to the date of layoff containing the names of employees in impacted titles at impacted locations ranked by seniority who are eligible for transfer to positions in other agencies in their current title and direct line lower level titles.

### **"BUMP"**

A commonly used term which does not appear in the laws or rules governing RIFs. In the official lexicon of Civil Service layoff procedures, "bump" refers to the vertical displacement within the competitive class from a higher level title to a lower level title in a direct line of promotion.

### **GUIDELINES FOR THE ADMINISTRATION OF REDUCTIONS IN FORCE (RIF GUIDELINES)**

A policy and procedure manual published by the Department of Civil Service to assist agencies in the administration of a layoff. The manual includes timelines, legal requirements, and procedural assistance for HRM and Department of Civil Service staff.

## HORIZONTAL REASSIGNMENT

In a layoff situation, an agency must offer more senior employees who cannot retain a position in their current location an opportunity to be reassigned to another location where they will displace less senior employees in the same title.

## LAYOFF

This term is not in the Civil Service Law; it is used whenever an employee is separated or loses status in his/her position as a result of the abolition or reduction of positions. For example, employees whose positions are not abolished but are “bumped” have been laid off.

## PREFERRED LIST

A mandatory list established as of the date of layoff containing the names of laid off employees ranked by layoff unit and seniority, for reinstatement to their layoff title and direct line lower level titles, and/or other appropriate titles.

## REDUCTIONS IN FORCE (RIF)

This is another term for layoffs.

## REEMPLOYMENT ROSTER

A mandatory list established as of the date of layoff containing the names of laid off employees for appointment to titles other than those for which they are eligible for reinstatement from a preferred list. These generally are titles in their former occupational field as determined to be appropriate by the Department of Civil Service. Employees' names are certified in random order without regard to seniority, status as a probationer, or layoff unit.

## RETENTION RIGHTS

As used in the Guidelines for the Administration of Reductions in Force, this term means the rights of one employee as compared to another to retain a position in a layoff.

## RETREAT

In a layoff situation, the displacement of the least senior employee with the least retention rights in the layoff unit in a lower level title when a higher level employee who is being laid off held that title on a permanent basis. Retreat is the only method of displacement available to employees in the noncompetitive and labor classes. Only those competitive class employees who have no bumping rights may retreat.

## SENIORITY

For purposes of layoff, seniority is defined as the date of original permanent appointment in the classified service and continuous service since that date, modified for preference for veterans or the blind, if any. Seniority dates may be reconstructed for breaks in service for individuals reinstated after October 1985 pursuant to Civil Service Law §§80.3 and §80a.

## SENIORITY ROSTERS

Computer generated reports produced by the Department of Civil Service at the request of an agency for those titles which may be affected by layoffs. Each roster lists the item number, name, Social Security number, appointment status, seniority, and veterans status of each employee serving in a title, or on leave from a title, in the layoff unit. Employee unions automatically receive copies of any seniority rosters ordered by agencies.

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