



Reduction in Force

Introduction

Reduction in Force (RIF) occurs when it is necessary to eliminate positions in the Civil Service of the State. RIF may occur when there are changes in agency organization, such as transfer or merger of department functions. RIF may also occur in times of financial strain or as a result of the loss of funding streams, such as Federal funding for programs maintained by the State.

This guide provides an overview of the processes and policies that govern RIF procedures. The information contained in this guide comes from a variety of sources including the New York State (NYS) Civil Service Law and materials developed by the NYS Department of Civil Service.

This overview contains information useful for understanding the RIF process. However, every employee's situation is different. Factors such as title, appointment status, and seniority may affect your rights in a RIF situation.

We encourage PEF members, leaders, and staff to familiarize themselves with the policies outlined in this guide to have the firmest foundation of knowledge in the event of RIF.

What is a Reduction in Force?

A Reduction in Force (RIF), or layoff, is the separation or demotion of employees resulting from the abolition of positions. A RIF is a decision made by agency management, the Division of the Budget (DOB), State Operations, and in some cases, the State Legislature. The RIF process is governed by both state law and provisions in the collective bargaining agreements between the State and public employee unions.

Agency management, in conjunction with DOB, may determine that certain positions are no longer necessary to support the agency mission, or that there is not sufficient funding to support certain positions. Agency management and DOB agree on which specific positions are to be abolished. The agency then submits an electronic action to formally remove the position. If the positions that must be abolished are filled by employees (as opposed to vacant positions), then RIF occurs.

Employees' Rights

Layoffs occur within a defined layoff unit. Most agencies consist of one layoff unit, but some have multiple layoff units differentiated by geographic region. The approved layoff units are listed in Civil Service Rule 72.1. A RIF occurring in one layoff unit will not affect employees in other layoff units.

Which employees are dismissed, in what order, and which employment and reemployment options are available to them, are affected by retention rights. Employees' retention rights in a RIF situation are determined by appointment status and seniority. **Permanent employees**, including probationers and contingent permanent employees, have

rights in a RIF situation. **Provisional and temporary employees** do not have rights and must be dismissed before permanent employees.

Among employees with retention rights, seniority affects the order of layoffs. For layoff purposes, seniority is defined as the date of original permanent appointment in classified service and continuous service since that date. Service is considered continuous unless it is interrupted by a period of more than three years out of State service. Employees with a break in service of longer than three years have their seniority date recalculated. Employees who are on approved leave or on a preferred list are considered to be in service.

Certain employees may be eligible for additional seniority rights:

- Wartime veterans receive two and a half years of additional seniority, and wartime disabled veterans receive five years of additional seniority.
- Employees who qualify as head-of-household and whose spouse is a disabled veteran with a 100% service-connected disability may be eligible for five years of additional seniority.
- Legally-blind employees must be considered more senior than any other employee in their same title who has the same retention status (e.g. probationer, non-probationer).

Order of Layoffs

When RIF occurs, non-permanent (temporary and provisional) employees must be suspended before any permanent employees, including contingent-permanent and probationary employees. Non-permanent employees do not have retention or preferred list status rights. If any non-permanent employees are on leave of absence from another position, they can return to their hold item.

After all non-permanent employees have been dismissed, if there remain additional positions that must be reduced, then probationary employees are dismissed. These layoffs begin with the least senior probationer. Probationary employees are entitled to reemployment list status. They can also be restored to their hold items.

Permanent employees who are not on probation are the last to be dismissed, beginning with the least senior. Non-probationary permanent employees may only be dismissed after all non-permanent employees and permanent employees on probation have been dismissed.

Remaining in Service

Civil Service Law and regulations provide mechanisms for employees at risk of being laid off to remain in service. Agency Reduction Transfer Lists, Horizontal Reassignment, and Vertical Displacement are voluntary options used to prevent the layoff of employees with retention rights. However, if an employee refuses one of these options, it may affect their eligibility for other options to remain in service.

Agency Reduction Transfer Lists

Agency Reduction Transfer Lists (ARTLs) are required by law to be created before layoffs begin. These lists contain the names of employees who may be affected by layoffs and are used to provide transfer opportunities. Participation is voluntary on the part of the employee. Permanent and probationary employees are eligible. Temporary and provisional employees may be eligible for ARTL if they have a hold item that could be affected by RIF.

ARTLs allow employees to transfer from one agency or department of the State to positions in the same or comparable title to avoid layoff. They provide transfer opportunities to the same or lower-level direct line title and to titles determined to be comparable by the Department of Civil Service.

Horizontal Reassignment

When a layoff unit includes multiple geographic locations, agencies must offer more senior employees who cannot retain a position at their current location the opportunity to be reassigned to another location within the same layoff unit. Such employees displace less senior employees in the same title.

Employees who refuse this type of reassignment and are consequently separated from service are unable to exercise vertical displacement rights, meaning they cannot “bump” other employees in the layoff unit or retreat to a position in a previously held title.

However, if an employee refuses reassignment to a position in a different county, their name will be placed on the ARTL prior to the date of layoff, and their name will be included on preferred lists after the date of layoff, for counties other than the one to which reassignment was refused.

Vertical Displacement (Bumping)

In a layoff situation involving multiple geographic locations, vertical displacement occurs after all horizontal reassignments have been made. Vertical displacement allows more senior employees to displace less senior employees in lower-level direct line titles in the same layoff unit. Vertical displacement is commonly referred to as “bumping”. Bumping is administered first to employees holding positions at the highest level title in an affected series, as the displacement of employees in higher titles directly affects employees in lower-level titles.

Bumping allows a more senior employee in a higher-level title to displace a less senior employee in a lower-level direct line title. Employees may only bump to occupied positions, not vacant positions. They cannot bump to positions that have also been identified for RIF. If all lower-level direct line positions are vacant or are being abolished, employees may bump to the next lower level.

The most senior employee whose position has been identified for RIF is the first to be eligible to bump. Any non-permanent employee in a lower-level title can be bumped by a permanent employee. If there are no non-permanent employees, employees in higher-level titles can bump the least senior probationer. If there are no probationers, the bumping employee can bump the least senior permanent employee in the lower-level title, provided that the bumping employee has an earlier seniority date.

Non-probationary permanent employees are the first to be given the option to bump to lower-level titles. After all non-probationary permanent employees have been given this opportunity, probationary employees can be considered. Probationers with a hold item cannot bump or retreat and must instead be returned to their hold. Probationers with at least five years of continuous service can bump any non-permanent employee, and, if there are none, they can bump the least senior probationer provided the bumping employee has an earlier seniority date. Probationers cannot bump non-probationary permanent employees.

Retreating

When there are no vertical displacement opportunities for employees whose positions will be affected by layoffs, employees may retreat to the position of the least senior employee in the same layoff unit in the title that the retreating employee last held on a permanent basis. Put more simply, employees can return to a position in a previously held title and displace the incumbent in that position. For retreating to occur, there must be no lower-level positions in the title series to which an employee is eligible to bump. Therefore, only employees in a position with no occupied lower-level positions in the direct line of promotion are eligible to retreat.

To be eligible for retreat, an employee cannot have had an opportunity to bump employees in their title series. An employee who declined an opportunity to bump is not eligible to retreat. Additionally, an employee who did not have sufficient seniority and retention rights to be considered for vertical bumping is not able to retreat.

An eligible employee can retreat to a position if the title to which the employee was previously appointed on a permanent basis if the title is at a lower salary grade than the title they currently hold, exists in the layoff unit, and is occupied. The retreating employee need not have occupied the title in a position within the layoff unit. If they served in the title at a different location or agency than the layoff unit, they may still be eligible to retreat.

As with bumping, more senior employees are eligible to retreat and displace employees with less seniority in the lower position. Employees on probation cannot displace permanent employees in previously held titles.

Reemployment Options

In a RIF situation, the layoff of some employees is inevitable. In order to help these employees return to state service as soon as possible, the Civil Service Law requires that employees who have been laid off must receive preference in hiring for future vacancies in state service.

These employees are provided preference in hiring through the use of reemployment lists. The different types of reemployment lists are redeployment lists, ARTLs, preferred lists, and reemployment rosters. When a vacancy in state service occurs for which there are any such lists, they are used in this order before any eligible list.

Redeployment Lists

Redeployment lists provide preference in hiring for employees who have been laid off due to the State contracting out for services. They are used to fill positions in the affected titles or in comparable titles. Employees' names remain on redeployment lists for six months after separation from service. These lists are ranked by seniority and take precedence over all other reemployment lists.

ARTLs

The purpose of ARTLs is discussed in further detail above. ARTLs may be used to fill vacant positions in state service if no appointment can be made from a redeployment list. ARTLs are certified first by title-for-title eligibles (ranked by seniority), then higher-level direct line eligibles (ranked by seniority), and finally comparable titles (unranked). An employee's name is removed from an ARTL when they have been separated from service.

Preferred Lists

Preferred lists contain the names of employees who have been laid off. They are used to fill the same or lower-level titles in direct promotion lines and positions in other titles which the Department of Civil Service has deemed appropriate. They are limited to positions in the same layoff unit from which the eligible was dismissed.

Preferred lists are ranked in the following order:

- Title-for-title category: eligibles laid off from a title are certified first to fill vacancies in the same title.
- Direct-line category: eligibles laid off from higher-level titles in a direct promotion line are certified second to fill vacancies in the lower-level title.
- Appropriate title category: eligibles laid off from closely related titles are certified third.

Eligibles are ranked by seniority, provided that eligibles who completed probation prior to layoff are certified before eligibles who were on probation. The names of eligibles remain on a preferred list for four years after the date of the layoff.

Reemployment Rosters

Reemployment rosters contain the names of employees who have been laid off and who the Department of Civil Service has determined are able to perform the duties of titles other than those to which they are eligible to be appointed from a preferred list. The Department makes this determination based on the similarities between the title from which eligibles were laid off and other civil service titles. Individuals appointed from a reemployment roster are expected to be able to perform the duties of the new title after a standard training or probationary period.

Eligibles on a reemployment roster are not ranked, so an appointing authority may hire any individual whose name appears on the list. Like preferred lists, the names of eligibles remain on a reemployment roster for four years after the layoff date.

Resources

Guidelines for the Administration of Reduction in Force, Department of Civil Service:

https://www.pef.org/pef_files/files/pdf/rif_guidelines.pdf

Employee Guide for Agency Reduction Transfer List, Department of Civil Service:

https://www.pef.org/pef_files/files/pdf/artl_brochure.pdf

Reductions in Force, A Manager's Guide, Department of Civil Service: https://www.pef.org/pef_files/files/pdf/rif-managersguide.pdf

Layoff Units, Civil Service Rule 72.1: <https://regulations.justia.com/states/new-york/title-4/chapter-v/part-72/section-72-1/>