



# RULES OF THE STATE PERSONNEL BOARD

## 478-1-.04 Reduction in Force

### (1) Introduction:

A reduction in force is the separation from a job, furlough, or salary reduction of one (1) or more employees as the result of a shortage of work or funds, a change in organization or operations, or to otherwise support the financial health and viability of an agency. This Rule defines the process for implementing reduction in force actions.

### (2) Applicability:

This Rule applies to Executive Branch employers, local departments of Public Health, and Community Service Boards. It does not apply to other public corporations, Authorities, or the Board of Regents of the University System of Georgia.

### (3) Definitions:

For the purposes of this Rule, the following terms and definitions apply in addition to those in Rule 478-1-.02, *Terms and Definitions*:

- (a) "Average Summary Rating" means the average of the summary ratings of all annual performance evaluations issued in the two years immediately prior to the performance evaluation cutoff date.
- (b) "Competitive Area" means an organizational, budgetary, or geographic part of the agency to which a reduction in force is to apply, such as a particular worksite, budget unit, function, or the entire agency. A reduction in force may include multiple competitive areas.
- (c) "Competitive Jobs" mean those job titles/codes to which the reduction in force is to apply.
- (d) "Overtime" means work time that qualifies for premium compensation under the Fair Labor Standards Act (FLSA). Typically it is time worked over 40 hours in an FLSA workweek with limited exceptions that may apply to law enforcement, fire protection, and health care employees.
- (e) "Summary Rating" means the overall rating provided on an annual performance evaluation.

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## (4) Types of Reduction in Force:

A reduction in force may involve layoff, furlough, or reduction in salary.

### (a) Reduction in Force – Layoff

1. An agency may lay off staff in accordance with a plan filed with DOAS when necessary to meet business needs.
2. Layoff results in the employee's separation from employment. The separation is not considered disciplinary.

### (b) Reduction in Force – Furlough:

1. An appointing authority may place employees in non-pay (furlough) status as a temporary reduction in force in accordance with a plan filed with DOAS.
2. Employees may be furloughed no more than 30 workdays within any 12-month period. (See Section (22)(h) of Rule 478-1-.16, *Absence from Work*.)
3. All affected classified employees in the same competitive job within a competitive area must be placed in non-pay status for the same number of days. Therefore, competition is not necessary and retention credits are not calculated. (See Section (5)(c) of this Rule.)
4. The agency has discretion to vary the number of furlough days for unclassified employees in the same competitive job within a competitive area, if necessary to meet business needs. A competitive process is necessary when the number of furlough days will vary among employees in the same competitive job. (See Section (5)(c) of this Rule.)
5. When furloughing an FLSA exempt employee, the agency will follow FLSA provisions to treat the employee as a non-exempt employee during any FLSA workweek in which a furlough occurs. During an FLSA workweek that includes furlough time, both exempt and non-exempt employees will be compensated for all hours worked, and if overtime is inadvertently worked, the overtime compensation rate will be time and a half.

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## (c) Reduction in Force – Salary Reduction:

1. An appointing authority may reduce the salary of employees to conserve funds in accordance with a plan filed with DOAS. (See Rule 478-1-.12, *Salary*.)
2. The plan will define the amount or percentage of salary reduction and the period of reduction for each competitive job within each competitive area.
3. All affected classified employees in the same competitive job within a competitive area must have their salary reduced by the same amount or percentage and for the same amount of time. Therefore, competition is not necessary and retention credits are not calculated. (See section (5)(c) of this Rule.)
4. The agency has discretion to vary the conditions of salary reduction for unclassified employees in the same competitive job within a competitive area, if necessary to meet business needs. A competitive process is necessary when the conditions will vary among employees in the same competitive job. (See section (5)(c) of this Rule.)
5. Prior to reducing the salary of a Fair Labor Standards Act (FLSA) exempt employee, the agency should determine whether such action would result in the loss of the FLSA exemption.

## (5) Process Overview:

- (a) The agency determines the scope of the reduction in force, including the segments of the agency to be affected (i.e., competitive areas), the jobs to be affected (i.e., competitive jobs), and the number of employees to be affected.
- (b) Identifying Affected Employees:
  1. The agency must use a competitive process to identify which employees in competitive jobs within a competitive area will be affected under the following conditions:
    - (i) if some employees in the same competitive job within a competitive area will be affected and others will not;

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- (ii) if employees in the same competitive job within a competitive area will be laid off at different times, furloughed a different number of days, or reduced in salary dissimilarly.
  - 2. A competitive process is not needed when all employees in the same competitive job within a competitive area will be laid off on the same date, furloughed the same number of days, or reduced in salary under the same conditions.
  - 3. When determining whether a competitive process is necessary, each competitive job within a competitive area is reviewed separately. Employees within the same job in a competitive area compete among themselves, not with other potentially affected employees in different jobs.
  - 4. An agency may further restrict competition by classified/unclassified status, or may allow classified and unclassified employees within the same competitive job to compete with one another.
  - 5. When a competitive process will include a classified employee, the agency must calculate retention credits and determine the order of retention as defined in this Rule.
- (c) The agency will file a reduction in force plan with the Department of Administrative Services (DOAS) and adhere to other notice requirements outlined in this Rule.

## **(6) Employees on Contingent Leave or Working Test:**

In the event of a reduction in force that involves a layoff, the following provisions apply for employees in a competitive job within a competitive area who are either on contingent leave or working test.

- (a) Classified and unclassified employees on contingent leave without pay shall be the first to be separated, except as set forth in Section (7)(d) of this Rule.
- (b) Classified employees on working test following a promotion shall revert to the last job (or equivalent if such job is not available) in which they hold permanent status and shall, if necessary, compete with other employees in that job, provided the job exists in the competitive area.

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## (7) Competitive Process for Classified Employees:

- (a) The order of retention of classified employees involved in a competitive process is determined by a combination of retention credits, average summary performance rating, and status as a veteran of a period of armed conflict, as outlined in this section.
- (b) Retention Credits:
  1. Retention credits are calculated using an employee's average summary rating of annual performance and length of continuous and most recent service.
  2. Summary Rating of annual performance:

Summary ratings on performance evaluations are assigned the following numerical values for the purpose of computing retention credits:

    - (i) zero (0) for a summary rating of "Unsatisfactory Performer"
    - (ii) two (2) for a summary rating of "Successful Performer – Minus"
    - (iii) three (3) for a summary rating of "Successful Performer"
    - (iv) four (4) for a summary rating of "Successful Performer – Plus"
    - (v) five (5) for a summary rating of "Exceptional Performer"
  3. The average summary rating is derived by adding the numerical values assigned to the summary ratings of all annual performance evaluations issued in the two (2) years immediately prior to the performance evaluation cutoff date set by the agency in the reduction in force plan and dividing the sum thereof by the number of ratings, rounded to the nearest tenth of a point.
  4. If no performance evaluation was issued during the two-year period, an employee will be assigned a presumptive average summary rating of three (3) Successful Performer.
  5. The average summary rating converts to retention credits as follows:
    - (i) 0 retention credits for an average summary rating of 1.0 to 1.9

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- (ii) 60 retention credits for an average summary rating of 2.0 to 2.4
  - (iii) 68 retention credits for an average summary rating of 2.5 to 2.9
  - (iv) 76 retention credits for an average summary rating of 3.0 to 3.4
  - (v) 84 retention credits for an average summary rating of 3.5 to 3.9
  - (vi) 92 retention credits for an average summary rating of 4.0 to 4.4
  - (vii) 100 retention credits for an average summary rating of 4.5 to 4.9
  - (viii) 108 retention credits for an average summary rating of 5.0
6. Employees receive one (1) additional retention credit for each full year of continuous service, including any period of leave which has been allowed in accordance with these Rules.
- (i) One-half year or more will be considered as one (1) year; less than one-half year will be disregarded.
  - (ii) For determining years of continuous service as provided in this section, service shall be computed up to the effective date of the reduction in force.
  - (iii) If a classified employee was hired into the Executive Branch from a local department of Public Health or Community Service Board, or vice versa, without a break in employment, then continuous classified service with these employers is considered when determining retention credits.
7. The sum of the retention credits for the average summary rating of performance and length of continuous service equals the total number of retention credits for an employee.
- (c) Sequence for Reduction of Employees with Permanent Status:
- 1. Within a competitive job in a competitive area the order of reduction in force of employees in each job shall be:
    - (i) First group to be reduced – from the lowest to highest number of retention credits, employees who are not honorably discharged veterans of a period of

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armed conflict and whose average summary rating of performance is lower than three (3) “Successful Performer”;

(ii) Second group to be reduced — from the lowest to highest number of retention credits, employees who are honorably discharged veterans of a period of armed conflict and whose average summary rating of performance is lower than three (3) “Successful Performer”;

(iii) Third group to be reduced – from the lowest to highest number of retention credits, employees who are not honorably discharged veterans of a period of armed conflict and whose average summary rating of performance is three (3) “Successful Performer” or higher; and,

(iv) Fourth group to be reduced – from the lowest to highest number of retention credits, employees who are honorably discharged veterans of a period of armed conflict and whose average summary rating of performance is three (3) “Successful Performer” or higher.

2. If two (2) or more employees are tied in the total number of retention credits and one (1) or more, but not all, employees so tied will be more affected by the reduction in force than the other(s), the appointing authority will select the manner in which the order of retention shall be determined.

(d) Exception to the Sequence for Reduction:

Classified employees in the same competitive job in a competitive area are affected by reduction in force in the sequence within Section (7)(c) of this Rule, except as outlined in this paragraph. If the position of an employee is not to be abolished and the appointing authority determines its duties cannot be satisfactorily performed after a reasonable training period by an employee higher in the order of retention whose position is to be abolished, the employee who can satisfactorily perform the duties may be retained in preference to an employee higher in the order of retention. The facts supporting use of this provision must be stated in the reduction in force plan.

## **(8) Competitive Process for Unclassified Employees:**

When a competitive process will include only unclassified employees, the agency has discretion to use the classified employee formula or implement another non-discriminatory process that effectively supports its business needs. For example, the

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agency may consider some combination of performance, tenure, competencies, discipline history, etc.

## (9) Reduction in Force Plan:

- (a) To implement a reduction in force, the agency creates a plan. The reduction in force plan will include the following information:
1. the type of reduction in force action (i.e., layoff, furlough, or salary reduction);
  2. the proposed effective date(s);
  3. the reason for the action (e.g., reorganization, outsourcing, funding, etc.);
  4. a definition of the competitive area(s) and list of competitive jobs within each competitive area;
  5. the total number of classified and unclassified employees in each competitive job by competitive area and the number of classified and unclassified employees proposed to be impacted by reduction in force within each competitive job by competitive area;
  6. the amount or percentage of reduction **if the reduction in force involves salary reduction**;
  7. the basis used to determine the order of retention **if competition among unclassified employees is required**; and,
  8. **if competition among classified employees is required for a competitive job**:
    - (i) the cutoff date after which performance evaluations will not be accepted;
    - (ii) a list of employees in the competitive job in order of retention, showing veterans' preference status and retention credits;
    - (iii) justification of any retentions under Section (7)(d) of this Rule, if applicable; and,
    - (iv) if applicable, the method used to determine the order of retention when employees are tied in total retention credits and at least one (1), but not all, will be laid off or will be laid off earlier than others.

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- (b) The plan must be filed with the Department of Administrative Services (DOAS). When practicable, the plan should be sent to DOAS before implementing the reduction in force.
- (c) DOAS will review the plan and provide consultation, as appropriate.
- (d) No classified employee will be affected by reduction in force except in accordance with a plan submitted to DOAS.
- (e) The appointing authority will make available, upon request, a copy of the reduction in force plan for inspection by any employee or former employee who was directly affected by the reduction in force.

## (10) Legislative Notification:

If a reduction in force would result in the elimination of 25 or more positions or the layoff of 25 or more employees (including classified and/or unclassified employees), the appointing authority shall, at least 15 calendar days prior to notifying employees of the proposed action, notify the President of the Georgia Senate and the Speaker of the Georgia House of the proposed reduction. The notice shall:

- (a) identify the facility(ies) and operation(s) to be affected and the estimated number of employees to be affected; and,
- (b) state the reasons for the proposed action.

## (11) Employee Notice:

- (a) Except as set forth in Section (12) of this Rule, each classified employee laid off, furloughed, or subjected to salary reduction by a reduction in force will be notified in writing at least 30 calendar days prior to the action.
- (b) Such notice to classified employees shall contain, at a minimum:
  1. a statement of the proposed action to be taken with respect to the affected employee;
  2. an explanation of the affected employee's right of appeal;
  3. if the employee is being laid off, any opportunities for possible continued employment or opportunities to apply for employment with any public or private

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party assuming the functions of the employee, or any other similar opportunities; and,

4. an explanation of any rights and options with respect to employment benefits, including, but not limited to, any right to continue participation in any retirement system or insurance plan.

(c) Each unclassified employee laid off, furloughed, or subjected to salary reduction by a reduction in force is to be notified in writing. The notice may be similar to the classified employee notice with the exception that Section (11)(b)2 is not to be included because unclassified employees have no appeal rights. The minimum 30-day notice is not mandatory for unclassified employees, but should be considered when practicable.

## **(12) Advance Notice Exception based on Unavailability of Funds:**

The advance notice requirements in Sections (10) and (11) of this Rule shall not apply to a reduction in force which must become effective immediately if the agency has insufficient funds available to pay the salaries of the affected employees. Each employee affected by a reduction in force must still be notified in writing prior to the action.

## **(13) Reinstatement for Classified Employees:**

A classified employee who has been laid off as a result of reduction in force, and who meets all the qualifications (including any licensure and certification requirements and special qualifications), shall retain status in and right to reinstatement to a vacant classified position in the job in the competitive area from which the employee was laid off for a period of one (1) year from the date of separation and shall be offered reinstatement in inverse order to the order of layoff. A refusal by the employee of reinstatement upon reasonable notice by the appointing authority nullifies the right to reinstatement.

### **Authority:**

O.C.G.A. §§. 45-20-3, 45-20-3.1, 45-20-4 (duties and functions of the State Personnel Board and Department of Administrative Services related to the Rules of the State Personnel Board) and O.C.G.A. § 45-20-19 (reduction in force)