

Article 18: Reduction in Force and Transfer of Function

Section 1. Scope.

This Article governs Reduction in Force (RIF) and Transfer of Function (TOF) actions as provided in applicable laws and regulations. For purposes of this Article, the following terms are defined in law and are included for informational purposes:

- A. **Reduction in Force (RIF):** When the Agency releases a competing employee from his or her competitive level by furlough for more than thirty (30) days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work, shortage of funds, insufficient personnel ceiling, reorganization, the exercise of reemployment rights or restoration rights, or reclassification of an employee's position due to erosion of duties when such action will take effect after the Agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within sixty (60) days or within thirty (30) days in emergency situations.
- B. **Transfer of Function (TOF):** The transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected; or the movement of the competitive areas in which the function is performed to another commuting area.
- C. **Function:** All or a clearly identifiable segment of any agency's mission (including all integral parts of that mission, regardless of how it is performed).
- D. **Competitive Area:** The Agency will define the competitive area for a RIF or TOF action. The competitive area may consist of all or parts of the Agency. The competitive area will be defined solely in terms of EPA's organizational unit(s) and geographical location and will include all employees within the competitive area so defined.
- E. **Competitive Level:** Positions in the competitive area that are in the same grade (or occupational level) and classification series that are so alike in qualification requirements, duties, responsibilities, pay schedule, and working conditions that the incumbent of one position can successfully perform the critical elements of any other position in the level upon assignment to it, without loss of productivity or undue interruption.
- F. **Commuting Area:** The geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more

neighboring ones) and the surrounding localities in which people like and can reasonably be expected to travel back and forth daily to their usual employment.

- G. Undue Interruption: A degree of interruption that would prevent the completion of required work by the employee ninety (90) days after the employee has been placed in a different position under a RIF action. However, a work program would generally not be unduly interrupted even if an employee needed more than ninety (90) days after the RIF to perform the optimum quality or quantity of work. The ninety (90) day standard may be extended if placement is made to a low priority program or to a vacant position.

Section 2. Statement of Principle.

- A. The Agency and the Union recognize that employees may be seriously and adversely affected by a Reduction in Force (RIF) or Transfer of Function (TOF) action. Before implementing a RIF or TOF affecting bargaining unit employees, the Agency will attempt to minimize adverse effects through such appropriate means as attrition, reassignment, furlough, hiring freeze, and early retirement. The Agency considers a RIF to be an action of last resort.
- B. Before taking a final decision in the matter, the Agency will meet with the appropriate Local for the affected location(s) as soon as possible to discuss any alternatives that could alleviate adverse effects on employees.

Section 3. Notice to the Union.

- A. When the Agency reaches a final decision to take a RIF or TOF action, the Council President and the affected Local will be notified in writing at the earliest possible date, but no later than ninety (90) days prior to the effective date. Notice will include the reason for the RIF or TOF, approximate number and types of positions to be affected, geographic location, and anticipated date of the planned actions.

Section 4. Retention Registers.

- A. The Agency will make current its retention registers before giving notice to affected employees. Upon request, the Agency will provide the Union with a copy of the updated retention register(s) and will meet with the Union to discuss any questions the Union has regarding the register(s). Employees will be permitted to review retention registers with the employee's name, and other retention registers for other positions that could affect the composition of the employee's competitive level and/or the determination of the employee's assignment rights.

Section 5. Notice Timing.

Consistent with 5 C.F.R. § 351, after notice to the Union, the Agency will provide notice of RIF or TOF action to affected employees of no less than sixty (60) full days. Individual RIF or TOF notices must include the following information:

- A. The action to be taken, the reason for the action, and its effective date;
- B. The employee's competitive area, competitive level, retention subgroup, service date, and three most recent performance ratings of record received during the last four (4) years;
- C. The place where the employee may inspect the regulations and records pertinent to this case;
- D. The reasons why any lower standing employees in the same competitive area are being retained;
- E. Grade and Pay retention information applicable to the employee receiving the notice;
- F. Information on reemployment rights;
- G. The employee's right to grieve the action under Article 38, Negotiated Grievance Procedure.
- H. The option to either grieve the action under Article 38, Negotiated Grievance Procedure or to the Merit Systems Protection Board if the employee alleges the RIF action is a Prohibited Personnel Practice under 5 U.S.C. § 2302.

Section 6. Offer of Position.

- A. The Agency shall, in accordance with 5 C.F.R. § 351, if possible, offer an assignment to each employee adversely affected through the implementation of a RIF or TOF. Consistent with 5 C.F.R. § 351.701 the offer, if made, shall be of a position as close as possible to, but not higher than, the current grade of the affected employee, and the position shall be in the same competitive area. Employees adversely affected by a RIF or TOF may request, in writing, that they be assigned to a particular continuing position meeting the provisions in the previous sentence. An employee is restricted to making such a request only one time; the request can be made only after the retention registers have been completed. Such an employee request will be answered within ten (10) days. These employee requests will not be grievable under the Negotiated Grievance Procedure if the request is rejected by the Agency.

- B. Employees will respond in writing to a best offer of employment to another position within fifteen (15) calendar days of receipt of a written offer. Failure to respond within fifteen (15) days will be considered a rejection of the offer.

Section 7. Potential Waiver of Conditions.

In accordance with applicable RIF and TOF regulations and to the extent feasible, if the Agency is unable to offer an assignment to an affected employee, the Agency will waive some qualifications for a vacant position which it intends to fill, which does not contain selective placement factors, provided the a) employee meets any minimum education requirement for the position; b) Agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

Section 8. Use of Vacancies.

Use of Vacancies. To the extent possible, the Agency will not fill a vacant bargaining unit position within the organizational unit in which the RIF is taking place until it has considered all reasonable alternatives to reduce the adverse effects on bargaining unit employees who are to be displaced as a result of the RIF. In considering these alternatives, the Agency will review the possibility and feasibility of redesigning vacant positions.

Section 9. Relocation.

- A. Employees who are relocated by the Agency as a result of action covered by this Article will receive relocation expenses and authorized absence as provided by law and regulations.
- B. Employees reassigned to a different commuting area who relocate will be allowed a period of time, as appropriate on a case-by-case basis, to complete the move and report to work at the new work location.
- C. The employee will be provided administrative time to research relocation matters such as area housing and schools in the new geographic location, disposition of their current homes, and to handle any other matters related to the move, to the extent allowable under appropriate laws and regulations.

Section 10. Placement Services.

- A. The Agency will utilize all resources available under applicable law and regulation in efforts to place employees who are separated or reduced in grade in a RIF. This will include the Agency's Reemployment Priority List and OPM's Career Transition Assistance Program. Employees separated in a RIF will receive priority consideration to fill vacant positions at the activity where they worked for which they are qualified for in accordance with eligibility and employment restrictions per 5 C.F.R. § 330.

B. Whenever technological changes cause abolishment of some jobs and the establishment of other, the Agency agrees, when feasible, to utilize the abilities and skills of the displaced employees through established re-training programs designed to qualify these employees for other jobs:

(1) when feasible and applicable by law and regulation, and (2) consistent with the abilities of the employees.

C. Repromotion:

(1) for a period of two (2) years, an affected employee demoted by an action covered by this Article will be repromoted to vacancies the Agency determines to fill as they occur according to the following criteria:

(a) A satisfactory performance rating on his/her most recent rating which is documented in his/her official personnel file and meets other eligibility requirements of 5 C.F.R. § 330.

(b) The employee has the requisite skills and abilities for the position without undue interruption.

(2) If more than one employee meets the criteria of subsection 1 and is not subject to the criteria in subsection 2, the employee who has the higher retention standing will be promoted.

(3) An employee who was previously demoted without personal cause, misconduct or inefficiency, and who meets all other eligibility criteria in 5 C.F.R. §330, will receive special consideration for repromotion.

D. Employees facing RIF actions will receive reasonable amounts of administrative leave to contact federal job placement officials and employment agencies.

Section 11. Excepted Service.

In reduction in force and transfer of function actions, the Agency will apply the same procedures in this Article for both competitive and excepted service employees only as provided by applicable laws and regulations; however, excepted service employees will compete only with other excepted service employees in the same appointing authority and in the same competitive area. In no case will excepted and competitive service employees compete with each other for retention or placement.

Section 12. Unemployment Compensation.

The Agency will counsel employees who are to be separated in a RIF in their eligibility and procedures for applying for unemployment compensation. Expert assistance from the relevant state will be obtained if the employee requests.

Section 13. Furloughs.

- A. Employees who are furloughed during a lapse in appropriations will be retroactively paid and otherwise compensated to the extent provided by law and regulation.
- B. Employees will be allowed to request a specific schedule for the furlough time. An employee's request will be honored unless management determines that mission and workload prevents approval of the request. Should an employee request be denied, the employee will be provided written reasons for the denial.
- C. The Agency will have a liberal leave without pay (LWOP) policy during periods of furloughs, but will not coerce any employee into using LWOP during a furlough. The Agency will inform employees of any differences in eligibility for unemployment compensation if the employee is placed on furlough of LWOP.

Section 14. Reemployment.

Reemployment. In accordance with applicable laws and regulations, terminated employees as a result of RIF action will be notified of Agency vacancies for which they are qualified and will receive priority consideration over non-Agency employees for a two-year period.

FOR THE AGENCY

FOR THE UNION

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