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IN FOCUS

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Reductions in Force (RIFs): An Overview

Introduction

In the federal government, layoffs are referred to as *reduction in force* (RIF) actions, as authorized under current law (5 U.S.C. §§3501-3504). When an agency eliminates positions, RIF regulations (contained in Title 5, Part 351, of the *Code of Federal Regulations*) "determine whether an employee keeps his or her present position, or whether the employee has a right to a different position." The Office of Personnel Management (OPM) is responsible for issuing guidance for agencies on RIF procedures. Since 2017, OPM's *Workforce Reshaping Operations Handbook* has provided detailed guidance on the RIF process.

Agencies have discretion to determine if a RIF is necessary, the number and types of positions needed to be abolished, and the timing of when a RIF occurs. A RIF action cannot be used to separate or demote any employee for an individual reason, such as employee performance or conduct. RIF regulations must be used when separating or demoting employees for an organizational reason (e.g., reorganization, lack of work, shortage of funds, insufficient personnel ceiling). Additionally, furloughs lasting longer than 30 calendar days or 22 discontinuous work days are considered RIF actions under the regulations.

Unless excluded by statute, RIF regulations apply to each federal civilian employee in the executive branch and any position that is "subject by statute to competitive service requirements or is determined by the appropriate legislative or judicial administrative body to be covered by the retention regulations." The *Workforce Reshaping Operations Handbook* provides more information on employees excluded from coverage of the RIF regulations, such as members of the Senior Executive Service and employees whose appointments are confirmed by Congress.

The RIF Process

When an agency executes a RIF action, it must comply with all applicable laws, regulations, and formal agency policies and the terms of any applicable collective bargaining agreement. This *In Focus* briefly outlines OPM's RIF procedures as prescribed by law and regulations. It is general in nature and may not describe every situation.

Competitive Area

Under the regulations, agencies are required to establish *competitive areas* in which employees compete for retention (5 C.F.R. §351.402). The competitive area may consist of all or part of an agency. The minimum competitive area is "a subdivision of the agency under separate administration within the local commuting area." OPM directs agencies to define each competitive area solely in terms of organizational unit(s) and geographical location(s). RIF-able employees compete for retention with other employees only within their competitive areas.

Competitive Level

After establishing competitive areas, agencies establish *competitive levels*. Under the regulations, a competitive level consists of "all positions in a competitive area which are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that an agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption" (5 C.F.R. §351.403(a)(1)). Position descriptions of RIF-able employees' official positions of record become the basis for competitive levels.

Retention Registers

After establishing competitive levels, the agency establishes a *retention register* for each competitive level. The retention register is the ranking of each employee subject to RIF within a competitive level after the agency applies four retention factors required by law (5 U.S.C. §3502):

1. Tenure of employment,
2. Military preference (also referred to as veterans' preference),
3. Length of service, and
4. Efficiency or performance ratings.

Determining Retention Standing

Employees subject to RIF are listed in the retention register in order of their relative retention standing based on the four retention factors.

For the first factor, tenure of employment, employees are categorized into three groups (5 C.F.R. §351.501(b)) based on their types of appointment. Group I consists of career employees who are not serving on probation. Group II consists of career-conditional employees and career employees who are serving probationary periods because of new appointments. Group III consists of employees serving under term and similar non-status appointments.

Within each group, the agency further subdivides employees into three subgroups by applying the military preference retention factor (5 C.F.R. §351.501(c)). Subgroup AD includes each preference eligible employee who has a compensable service-connected disability of 30% or more. Subgroup A includes each preference-eligible employee not included in Subgroup AD. Subgroup B includes each non-preference-eligible employee.

Within each of these subgroups, employees are then ranked based on their length of service (5 C.F.R. §351.503) to the

federal government writ large. The employee with the largest amount of federal service is placed at the top of the subgroup, and the employee with the least amount of service is placed at the bottom. All creditable federal civilian and military service is included when assessing this retention factor.

Finally, employees subject to RIF may receive extra retention service credit based on their performance (5 C.F.R. §351.504). This extra retention service credit is determined by "the employee's three most recent ratings of record received during the 4-year period prior to the date of issuance of reduction in force notices" (5 C.F.R. §351.504(b)(1)). The RIF regulations cover situations when all employees in the competitive area are covered by a single rating pattern (5 C.F.R. §351.504(d)), as well as situations when employees in the competitive area are covered by more than one summary rating pattern (5 C.F.R. §351.504(e)).

Release from the Competitive Level

Before an agency releases any employee from a competitive level, it must first release any noncompeting employee. As explained by the *Workforce Reshaping Operations Handbook*, a noncompeting employee is any employee who:

- holds a temporary appointment to a position in that competitive level,
- holds a term or temporary promotion to a position in that competitive level, or
- has received a written decision of removal or demotion because of unacceptable (or equivalent) performance or because of adverse action from a position in that competitive level.

Once noncompeting employees have been released, the agency releases competing employees from the RIF retention register in the inverse order of the employees' relative retention standing (5 C.F.R. §351.601), subject to certain exceptions (5 C.F.R. §351.606-608). This order is followed until the necessary number of employees are released from the retention register.

Bump and Retreat Rights

Competing employees released from the competitive level may have assignment rights known as *bump* and *retreat* rights (5 C.F.R. Part 351 Subpart G), which are described in detail in the *Workforce Reshaping Operations Handbook*. *Bumping* is "the assignment of an employee to a position in a different competitive level that is held by another employee in a lower retention tenure group, or in a lower subgroup within the same tenure group." *Retreating* is "the assignment of an employee to a position in a different competitive level that is held by another employee with less service in the same retention subgroup." In addition, released employees may be reassigned to vacant positions following the same retention standing procedures that apply to an employee's bump and retreat rights.

RIF Notices

Under current law and regulations, agencies are generally required to provide written notice to employees affected by a RIF 60 full days in advance of the date of release (5 U.S.C. §3502; 5 C.F.R. Part 351 Subpart H). When a RIF is caused by an unforeseeable circumstance, the head of an agency may request approval from OPM to provide notice less than 60 days in advance (5 C.F.R. §351.801(b)). An approved shortened notice period must cover a minimum of 30 full days before the date of release. The regulations detail the information that RIF notices must include, such as the reasons for the action, its effective date, and information on appeals (5 C.F.R. §351.802).

When 50 or more employees within an agency receive RIF notices, the agency is required to notify the appropriate state program authorized by the Workforce Investment Act of 1998, the chief elected government official of the local government(s) within which 50 or more employees will be separated by RIF, and OPM (5 C.F.R. §351.803(b)).

RIF Appeals

Under the regulations, "an employee who has been furloughed for more than 30 days, separated, or demoted by a reduction in force action may appeal to the Merit Systems Protection Board" (5 C.F.R. §351.901). OPM specifies that employees may appeal if they believe that the agency did not properly follow the RIF regulations. Released employees must submit appeals within 30 days of the effective release date.

RIF Alternatives

Agencies may be able to effectively abolish federal positions without using RIF procedures. The *Workforce Reshaping Operations Handbook* states, "At its discretion, an agency may reassign an employee, without regard to RIF procedures, to a vacant position at the same grade and rate of pay" and then decide not to staff the now-vacant position.

Selected References

5 U.S.C. §§3501-3504; 5 C.F.R. Part 351.

OPM, *Workforce Reshaping Operations Handbook*, March 2017, https://www.opm.gov/policy-data-oversight/workforce-restructuring/reductions-in-force/workforce_reshaping.pdf.

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