

State Human Resources Policy #E24-110.04

Reduction In Force

The language used in this document does not create an employment contract between the employee and the Agency. This document does not create any contractual rights or entitlements. The Agency reserves the right to revise the content of this document, in whole or in part. No promises or assurances, whether written or oral, which are contrary to or inconsistent with the terms of this paragraph create any contract of employment.

DEFINITIONS

Agency – The South Carolina Military Department/Office of the Adjutant General

Covered Employee - A Full-Time or Part-Time employee who is occupying a part or all of a Full-Time Equivalent (FTE) position who has completed the Probationary Period, and has a “Successful” or higher overall rating on the employee’s Employee Performance Evaluation (EPES), and who has grievance rights.

Non-Covered Employee - Probationary employee, temporary employee, temporary grant employee, time limited employee, and other employees exempt from the State Employee Grievance Procedure Act.

POLICY

1. In the event of a Reduction in Force, the South Carolina Military Department will release its Covered Employees in an equitable manner.
2. A Reduction in Force does not apply to Non-Covered Employees
3. A Reduction in Force may require the separation, involuntary demotion, reassignment, or a reduction in work hours of Covered Employees.
4. The Agency may implement a Reduction in Force for one or more of the following four (4) reasons:
 - Reorganization
 - Work shortage
 - Loss of funding
 - Outsourcing/Privatization
5. Bumping Rights.
 - a. Covered Employees who have accumulated more Retention Points than those Covered Employees with whom they are competing have Bumping Rights.
 - b. Under no circumstances can an employee gain from a Reduction in Force. Bumping rights are provided only downward.
6. The Agency will not retain any Covered Employee with a lower number of Retention Points in preference to another Covered Employee in a Competitive Area(s) and Group(s) with a higher number of Retention Points except when the Agency determines that a Retention of Necessary Qualifications applies.
7. A Covered Employee affected by a Reduction in Force has Recall and Reinstatement rights to a position in State government for one (1) year after the effective date of the Reduction in Force. At the time of Recall or Reinstatement, Covered Employees will be entitled to the restoration of employee

benefits, including the employee's accumulated Sick Leave, and will have the option of buying back all, some, or none of their Annual Leave at the rate it was paid out at the time of the separation.

8. A Covered Employee who is affected by a Reduction in Force has the right to file a grievance to the South Carolina Military Department, and to appeal to the Director of the South Carolina Department of Administration's Division of Human Resources only if the grievance or appeal is based on improper or inconsistent application of the Reduction in Force Policy or Plan (see State Human Resources Policy #E24-109.01 - Employee Grievance)

PROCEDURE

1. The Agency will determine the following items prior to developing the Reduction in Force Plan:

- Reason(s) for the Reduction in Force
- Areas(s) of the Agency to be impacted by the Reduction in Force (Competitive Area/Areas)
- State class title(s) within the Competitive Area(s) to be affected (Competitive Group/Groups)
- Number of positions in each State class title(s) to be eliminated

a. Competitive Areas(s)

(1) The Agency will determine the Competitive Area(s) the Reduction in Force will impact.

(2) When establishing the Competitive Area(s), the Area(s) should be clearly distinguishable from the staff in other areas where the interchange of employees would not be practical. The Competitive Area may be a department, a unit, a geographical location, or the entire Agency.

b. Competitive Group(s)

(1) The Agency will determine the Competitive Group(s) based on the State class title(s) within the Competitive Areas(s) that the Reduction in Force will affect.

(2) If the Reduction in Force is to apply to more than one State class title, each State class title will be treated separately, except where the reductions are to be made in a State class title series (i.e. Auditor I, Auditor II, Auditor III, Auditor IV, Audits Manager I, Audits Manager II) or in State class titles that are part of the Agency's customary career path (i.e. Administrative Assistant, Communications Coordinator, Communications Coordinator, Program Coordinator II, Program Manager I)

2. The South Carolina Military Department State Human Resources Officer (HRO) or their designee will identify the position(s) within the Competitive Area(s) and Competitive Groups(s) by identifying the following information:

- State class title
- State class code
- State pay band
- Total number of positions in the State class title within the Competitive Area
- Total number of positions in the State class title within the Competitive Area to be eliminated.

3. The State HRO or their designee will calculate the Retentions Points for each Covered Employee in the Competitive Area(s) and Competitive Group(s) to use in determining which Covered Employees are to be involuntarily demoted, reassigned, have reduced hours or separated. Retention Points are based on the total scores of the two most recent annual performance appraisals and the length of continuous State

service. The sum of the Retention Points for performance and length of continuous State service are the total Retention Points that an employee uses in the competition.

a. Performance Appraisal Points

(1) The State HRO or their designee will use the following numerical values assigned to the EPES performance ratings to determine the Retention Points for an annual performance rating:

EPES Performance Rating	Value
Exceptional	3
Successful	2
Unsuccessful	1

(2) The Agency will recognize the following previous performance ratings:

Previous Ratings	Equivalent Current Rating
Exceeds Performance Requirements	Exceptional
Meets Performance Requirements	Successful
Below Performance Requirements	Unsuccessful

(3) For employees who have transferred to the Agency whose previous agency utilized more or fewer level of performance, the Agency will recognize the performance ratings based on the previous agency's conversion to the three standard levels of performance in the State Employee Performance Management System.

(4) Absence of a Performance Appraisal. If the Agency did not complete an annual performance appraisal for the employee, the State HRO will assign the points equivalent to a "Successful" rating (i.e., 2 points). However, if in the previous year, the employee received a higher than "Successful" rating the employee will receive the points for the higher rating.

b. Continuous State Service Points

(1) Covered Employees will receive one (1) Retention Point for each year of continuous State service after the completion of a 12-month Probationary Period.

(2) Six (6) months or more of continuous State service will be considered as one (1) year of service and less than six (6) months of State service will receive no Retention Points.

c. Exception to Procedure for Retention Point Calculation

(1) If every position in the Competitive Areas is being eliminated, the Agency is not required to calculate Retention Points.

(2) For positions reestablished within one (1) year of the Reduction in Force, in the same Competitive Area, and in the same State class title, the Agency must calculate Retention Points at the time of recall or reinstatement. The Agency will calculate Retention Points using continuous State service and performance appraisal points based on the effective date of the Reduction in Force.

4. Sequence of Reduction in Force

a. The order of the Reduction in Force for each Covered Employee in each State class title(s) is determined by the total number of Retention Points for each employee.

b. If two or more employees affected by a Reduction in Force have the same number of Retention Points and not all are to be affected by the Reduction in Force, the Agency hire date will determine the order of the employees affected. The Agency will retain the Covered Employee with the earlier Agency hire date.

(1) If there should be a tie, the birth month of the employees will determine the final sequence of the Reduction in Force. The Agency will retain the Covered Employee with the earlier birth month in the calendar year.

(2) If there is still a tie, the date of birth of the employees will determine the final sequence of the Reduction in Force. The Agency will retain the Covered Employee with the earlier birthdate in the month.

5. Retention of Necessary Qualifications

a. If an employee is competing for a position that is not being eliminated and the Agency asserts that an employee with higher Retention Points who has rights to be placed in that position cannot satisfactorily perform the duties of the position within a reasonable training period, the employee with lower Retention Points may be retained in preference to the employee with higher Retention Points.

b. The Agency may determine the employee with higher Retention Points will not be able within a reasonable training period to satisfactorily perform the duties of the job based on the lack of knowledge, abilities, skills, supervisory responsibilities, or necessary experience.

c. When Retention of Necessary Qualifications is used in a Reduction in Force Plan, justification for this retention must be documented and approved by the Adjutant General or their designee prior to submitting the Reduction in Force plan to the South Carolina Department of Administration's Division of State Human Resources for review and approval for procedural correctness.

d. The State HRO will retain all documentation to support any retentions made based on Retention of Necessary Qualifications.

6. Reduction in Force Plan

a. Prior to implementing a Reduction in Force, the Adjutant General or his designee will develop a Reduction in Force Plan. This Plan must include the following:

- The reason for the Reduction in Force
- The identification of the Competitive Areas(s)
- The identification of the Competitive Group(s) [State class title(s)]
- The number of position(s) to be eliminated in each State class title
- A list of the Covered Employees, in order of Retention Points, in the Competitive Area(s) and Competitive Group(s) to include the following:
 - Name
 - Age, Race, and Gender
 - Retention Points
- Justification of Retention of Necessary Qualifications used in the Reduction in Force Plan

- The Agency's efforts to assist employees affected by the Reduction in Force

b. Approval Process. Once the Reduction in Force Plan is completed, the Agency will submit the following information to the South Carolina Department of Administration's Division of State Human Resources for review and approval for procedural correctness:

- The Reduction in Force plan as outlined above
- An organizational chart including each position (designated with the State class title and incumbent's name) within the Competitive Area(s)
- A copy of the Agency's Reduction in Force Policy
- A sample letter to employees affected by the Reduction in Force including the following information:
 - A list of employee's reinstatement rights
 - The procedure for the recall of an employee
 - The employee's grievance rights

7. Implementation of the Reduction in Force. The Agency will communicate the following information to each affected employee after the South Carolina Department of Administration's Division of State Human Resources approves the Reduction in Force Plan for procedural correctness and before the Reduction in Force becomes effective:

- The reason for the Reduction in Force
- The Competitive Area(s) and Competitive Groups(s) in which the employee competed
- The benefits to which the employee is entitled and the manner in which the Reduction in Force will affect the employee's State benefits, (i.e. health insurance, optional life, retirement)
- The employee's Reinstatement rights, (i.e. reinstatement of all Sick Leave; option of buying back all, some, or none of the Annual Leave at the rate at which it was paid out)
- The employee's Recall rights to any position within the Competitive Area that becomes available in the same State class title as the position the employee held prior to the Reduction in Force
- The manner in which the employee will be notified of any such vacancies
- The requirements of the S.C. Code of Laws, Title 8, Chapter 11, Section 8-11-185, which requires the reporting of information about the employees separated in a Reduction in Force to the South Carolina Department of Administration's Division of State Human Resources.

8. Recall and Reinstatement Rights

a. Recall Rights

(1) If a vacancy occurs within one (1) year after the effective date of the Reduction in Force in the Competitive Area and is in the same State class title as the position the employees held prior to the Reduction in Force, the Agency will recall employees in the inverse order of the Reduction in Force.

(2) The State HRO will notify the employees in writing of the job offer and recall rights. If the employee does not accept the job offer within ten (10) days, the employee's recall rights are waived.

(3) Should the employee accept the job offer, the Agency will reinstate the employee's accumulated Sick Leave, and will provide the recalled employee the option of buying back all, some, or none of their Annual Leave at the rate it was paid out at the time of the separation. Upon returning to

employment in an insurance eligible Full-Time Equivalent (FTE) position, the Agency will also offer the recalled employee insurance benefits as a new hire. The recalled employee may purchase retirement service credit under the Leave of Absence provision in the South Carolina Code of Laws, Title 9, Chapter 1, Section 9-1-1140(D) for the period of time the recalled employee was not employed by State government, at the cost specified in Section 9-1-1140(D). When an employee is recalled, this time will not be considered punitive in the determination of retiree insurance eligibility.

b. Reinstatement Rights

(1) An employee separated by a Reduction in Force may apply for any State job for which he/she meets the minimum training and experience requirements. Should the separated employee accept a job offer to a Full-Time Equivalent (FTE) position within one (1) year after the effective date of the Reduction in Force, the Agency will reinstate the employee's accumulated Sick Leave, and will provide the reinstated employee the option of buying back all, some, or none of their Annual Leave at the rate it was paid out at the time of the separation. Upon returning to employment in an insurance eligible Full-Time Equivalent (FTE) position, the Agency will also offer the reinstated employee insurance benefits as a new hire. The reinstated employee may purchase retirement service credit under the Leave of Absence provision in the South Carolina Code of Laws, Title 9, Chapter 1, Section 9-1-1140(D) for the period of time the reinstated employee was not employed by State government, at the cost specified in Section 9-1-1140(D). When an employee is reinstated, this time will not be considered punitive in the determination of retiree insurance eligibility.

(2) If an employee is reinstated to another position, they will retain their recall rights to a position in the same State class in the Competitive Area.