

U. S Merit Systems Protection Board

Information Sheet No. 13

Reduction in Force

Purpose

The purpose of this information sheet is to provide general guidance and background information. It does not represent an official statement approved by the Board itself, and is not intended to provide legal counsel or to be cited as legal authority. These types of personnel actions are governed by pertinent statutes, regulations, and case law. Should you have specific questions about a reduction-in-force situation, you should contact your human resources representative or an attorney. The Merit Systems Protection Board (MSPB) is prohibited by statute from issuing any advisory opinion.

What is a reduction in force?

A reduction in force (RIF) occurs when a federal agency is required to demote, separate, furlough for more than 30 days, or reassign, requiring displacement one or more employees, because of lack of work, shortage of funds, reorganization, insufficient personnel ceiling, reclassification of a position due to an erosion of duties, or the exercise of reemployment or restoration rights. [5 C.F.R. § 351.201\(a\)\(2\)](#).

What personnel actions are governed by the reduction-in-force regulations?

The personnel actions include demotions (including changes to a lower grade level or a reduction in the rate of pay), separations from employment and furloughs for more than 30 days.

What is the difference between a separation or downgrade and a furlough for more than 30 days?

A furlough is a temporary situation due to one of the reasons specified above but the agency expects to return the employee to duty once the situation resolves. A

separation or downgrade due to RIF is considered a permanent change in employment or a change in the employee's assignment.

What are the reasons for a RIF?

The reason for RIF may come from internal decisions by the head of the agency or other authorized officials making such decisions, or from external actions by the President, Congress, or the Office of Management and Budget that cause one of the situations that requires a RIF to resolve. In some situations, a RIF may be needed because of lower customer demand for a work unit's products or services.

Who decides to initiate a RIF?

Each agency is responsible for making decisions regarding what positions are required, where they are to be located, and when they are to be filled, abolished or vacated. [5 C.F.R. § 351.201](#)(a)(1). Agency officials must decide how to distribute the remaining resources and what parts and programs of the agency will be eliminated or decreased. This may require the balancing of priorities so as to cause the least delay necessary in accomplishing the agency's overall mission.

What is the RIF process?

The RIF system is based on the "competing employee" concept and the regulations provide that each agency must first describe the limits within which employees will compete with each other for retention. Once the agency decides that there is a need for a RIF, its first step is to create competitive areas that outline the boundaries of competition. [5 C.F.R. § 351.402](#)(a). The competitive areas must be large enough to permit adequate competition for employees yet small enough to be manageable. In some cases a competitive area may include the entire agency. These areas are generally described geographically or organizationally. The basic standard is that they include all or at least that part of an organization where employees are assigned under a single administrative authority. Competitive areas also can be established according to local commuting areas, which are determined by the distances people can reasonably be expected to travel from their home to work on a daily basis in the areas at issue.

How are positions viewed within the competitive areas?

The agency must review its occupational and grade structure and establish competitive levels. [5 C.F.R. § 351.403](#)(a)(1). These levels consist of all jobs at the same grade in the competitive area which are similar in duties, responsibilities, pay schedule, and requirements as to experience, training, skills, and aptitudes. Then, the names of all employees in each competitive level are listed on a retention register in order of their relative retention standing. Separate competitive levels must be established for positions in the competitive and excepted services, and based on four other categories named in § 351.403(b).

What factors are used to establish a retention standing?

The factors used to establish an employee's retention standing are tenure of employment, military preference, length of service, and performance ratings. The first factor (tenure) determines that employee's retention group, while the second factor (military preference) determines the employee's subgroup. In each subgroup the employees are then ranked by their length of service with adjustments to enhance their service by evidence of their relative performance. If positions are abolished within the competitive level, the employees are released in the inverse order of their retention standing.

What assignment rights does an employee have if they are reached for release?

The two rights are known as bumping and retreating. An employee who is released from his competitive level may be entitled to bump a lower subgroup employee in another competitive level if they are fully qualified to perform all of the duties of that position. [5 C.F.R. § 351.701](#)(a). The bumping employee must meet all standards and requirements necessary to satisfactorily perform the duties and responsibilities of the position without undue interruption to the agency activity. [5 C.F.R. § 351.702](#). A displaced employee may also be entitled to retreat to a position that they previously held and is now occupied by someone in the same subgroup with less service than the displaced employee. 5 C.F.R. § 351.701(c).

Is the agency required to provide notification of the RIF action?

Employees reached for release from their competitive levels are entitled to notice at least 60 days before the effective date of the demotion, separation or furlough. [5 C.F.R. § 351.801](#). The notice must provide the reason for the RIF and the employee's competitive area, competitive level, retention standing, and any offer of assignment. The notice also advises the employee where they may inspect retention registers as well as other documents and records that may have a bearing on the employee being reached for release. The employee is also advised of the right of appeal and the time limits for submitting an appeal. [5 C.F.R. § 351.802](#).

Does an employee have right to appeal to the Merit System Protection Board?

Yes. The appeal to the MSPB must be filed within 30 days from the effective date of the RIF or 30 days from receipt of the notice, whichever date is later. [5 C.F.R. §§ 351.901; 1201.22\(b\)](#).

Who has the burden of proof in a RIF appeal?

The agency has the burden of proof by a preponderance of evidence that it has properly invoked and implemented the relevant RIF regulations. This burden also includes that the agency provided the proper assignment rights to the affected employee. The employee retains the burden of proof of any defenses to the action they raise, such as discrimination or whistleblower reprisal.

Is there a right to a hearing on appeal?

Yes. Employees affected by a RIF have the right to a hearing. *Bommer v. Department of Navy*, [34 M.S.P.R. 543](#) (1987).

If an employee wins the appeal, what relief will the Board provide?

If the Board determines that the agency has not complied with the RIF regulations with respect to the action taken, the Board will enter an order requiring the agency to cancel or modify that action and compensate the employee for any lost wages or benefits suffered as the result of the agency's unwarranted personnel action. The Board may also issue an order, if appropriate, awarding attorney fees and certain other litigation expenses. [5 C.F.R. §§ 1201.111, 1201.202\(a\)\(1\)](#).