

## Reduction-In-Force Priority (for employees notified 7/1/2011 and after)

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Please note:

HB 834, signed into law by the Governor on August 21, 2013, made changes to the state's Reduction In Force Priority policy. Key changes effective immediately are that the priority given to the employee whose position has been reduced is satisfied (and terminated) when the employee accepts (or refuses) an offered position at the same or higher salary grade/salary grade equivalency or the same or higher salary rate as that of the position held by the employee at the time of official notification of reduction in force. Priority is also satisfied (and terminated) at the completion of the 12-month priority period. Changes to the policy and rules will be submitted to the State Human Resources Commission for approval on October 17, 2013.

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### Policy

Legislation provides an employment priority to career state employees, subject to the Human Resources Act, who have been officially notified in writing of Reduction-In-Force to enable a State employee to return to state service.

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### Coverage

Employees with career status (as defined by GS 126-1.1) who have received official written notification of imminent separation due to reduction-in-force, on July 1, 2011 and after, are eligible for priority consideration under the provisions outlined below.

An employee who is separated from a time-limited appointment is not eligible for priority unless the appointment extends beyond three years.

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### **Relationship to Other Priorities**

The priority for employees separated by reduction-in-force (RIF) and the priority for employees with less than 10 years of service subject to the Human Resources Act separated from exempt policy-making or exempt managerial positions are equal.

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### **Appeals**

A career state employee with priority status who has reason to believe priority consideration was denied in a selection decision may appeal through the agency grievance procedure and then to the State Human Resources Commission through the established contested hearing process of the Office of Administrative Hearings.

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### **Official Notification Requirements**

It is the employing agency's responsibility to notify the employee in writing of impending separation as soon as possible and in any case not less than 30 calendar days prior to the effective date of separation. The official notification shall include the employee's eligibility to receive priority consideration and appeal rights.

#### **Advisory Note:**

It is recommended that the official notification letter also include the following information:

- the expected date of separation
  - reasons for the reduction in force
  - benefits
  - vacation pay, sick leave, pro-rated longevity (if applicable), severance salary continuation or discontinued service retirement, insurance options (if applicable), and other benefits.
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### **Period of Priority**

An employee shall receive priority consideration for a period of twelve months from the date of the official written notification.

Employees who have priority status at the time of application for a vacant position and who apply during the designated agency recruitment period will be considered as priority applicants until the selection process is completed for that position.

#### **Advisory Note:**

Once an employee has been officially notified of separation by reduction in force, the employee's twelve-month period of priority begins. This twelve-month period cannot be extended under any circumstances. Agencies may, however, if funds are identified to continue employment for the

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employee, delay the separation date beyond the date originally stated in order to continue employment as long as funds are available.

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### **Priority Consideration**

Within all State agencies, an employee officially notified of reduction in force shall receive priority consideration. If it is determined that an eligible employee and any other applicant have "substantially equal qualifications," then the eligible RIF employee must receive the job offer. However, the priority for employees separated by reduction-in-force (RIF) and the priority for employees with less than 10 years of service subject to the Human Resources Act separated from exempt policy-making or exempt managerial positions are equal.

"Substantially equal qualifications" occur when the employer cannot make a reasonable determination that the job-related qualifications held by one applicant are significantly better suited for the position than the job-related qualifications held by another applicant.

The nature of the priority to be provided is as follows:

#### **Grade to Grade**

RIF applicants shall have priority for positions at the same salary grade or below as held at the time of official written notification.

#### **Grade to Band or Band to Grade**

For RIF applicants applying for positions in a different classification system than their classification at the time of official written notification (i.e., from graded to career banded or vice versa), a salary grade equivalent will be assigned for each competency level within a career banded classification. Applicants shall have priority for positions at the same salary grade or below.

#### **Band to Band**

RIF applicants shall have priority for positions in the same banded classification at the same competency level or lower as that held at the time of notification, or for

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positions in a different banded classification with the same or lower journey market rate as that held at the time of notification.

Advisory Note: The salary grade equivalent is not used when determining the RIF priority for a RIF applicant who was in a banded class at the time of notification and is applying for a position in a banded class.

Employees in a permanent full-time position that are notified of reduction-in-force shall have priority consideration to permanent full-time and permanent part-time positions. Employees in a permanent part-time position that are notified of reduction-in-force shall have priority consideration to permanent part-time positions.

Employees do not have priority consideration to exempt policy-making or exempt managerial positions.

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### **RIF from Trainee Positions**

For employees receiving notification of separation from trainee positions, who are eligible for priority consideration, the salary grade for which priority is to be afforded is the salary grade of the full class.

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### **RIF from Flat Rate Positions**

For employees receiving notification of separation from flat-rate positions, who are eligible for priority consideration, the salary grade for which priority is to be afforded is the salary grade which has as its maximum a rate nearest to the flat rate salary of the eligible employee.

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### **Priority for Retiring Employees**

An employee who, after receiving official written notice of impending reduction-in-force, retires or applies for retirement prior to the separation date waives the right to priority consideration and severance salary continuation.

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### **Salary Requirements**

The salary paid to a RIF applicant shall be calculated according to the salary administration policies. A RIF applicant shall not be paid a salary higher than the maximum of the salary grade (or banded salary range) of the position accepted.

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### **Probationary Period**

An employee, who has a break in service (more than 31 calendar days), with reduction-in-force priority status may be required to serve a new probationary period if:

- the essential duties and responsibilities of the position into which the employee is being reemployed are significantly different from those of the position held at the time of reduction in force notification; or
- the prior, documented performance history of the employee indicates performance failings; or
- the prior documented unacceptable personal conduct of the employee would make a probationary period a prudent protection of agency interests.

The employee shall be notified in writing of the decision to require a new probationary period.

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### **Satisfaction of RIF Priority Consideration**

If an employee accepts a permanent position (either full-time or part-time) with the State within the 12 month priority period, the priority is satisfied.

### **Effect of Priority if Lower Level Position, Salary, or Appointment Type Accepted**

Acceptance of a permanent position with State Government, whether at the same or lower salary grade, same or lower salary rate, and/or same or lower appointment type (permanent full-time or permanent part-time) satisfies the priority.

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### **Termination of RIF Priority Consideration**

Priority reemployment consideration is **terminated** when an eligible employee:

- refuses an interview or offer for a permanent position for which the employee applied;

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- accepts a permanent position for which the eligible employee applied;
- is placed in a permanent position for which the employee qualifies, within 35 miles of the original work station, prior to being separated from employment;
- declines placement in a permanent position for which the employee qualifies, within 35 miles of the original work station, prior to being separated from employment; or
- has received twelve months priority consideration.

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**RIF Priority Consideration and Other Employment**

An employee may accept the following employment and retain priority consideration throughout the twelve-month priority period:

- employment outside State government,
- a State position not subject to the Human Resources Act,
- a temporary position, or
- a contractual arrangement (see Advisory Note).

Advisory Note: Any employee separated from State government and paid severance wages shall not be employed under a contractual arrangement by any State agency, other than the constituent institutions of the UNC System and the constituent institutions of the N. C. Community College System, until 12 months have elapsed since the separation.

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**Notification to the Office of State Human Resources**

State agencies shall notify the Office of State Human Resources when employees are officially notified in writing of the reduction-in-force. Also, state agencies shall notify the Office of State Human Resources when a RIF applicant is hired. Timely notification to the Office of State Human Resources is required to ensure the Priority Verification List is accurate. The Priority Verification List is a tool for agency HR staff to quickly assess priority status of applicants.

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