

REDUCTION IN FORCE

Model Policy

(Revised and Effective 3/1/16)

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.

I. Purpose and Scope

The purpose of this policy is to prescribe the manner in which covered employees in State government are released in an equitable manner should a reduction in force become necessary. A reduction in force may require the separation, involuntary demotion, reassignment, or reduction in work hours of the Agency's covered employees. A reduction in force does not apply to non-covered employees (e.g., probationary employees, temporary employees, temporary grant employees, time-limited project employees, research grant employees and employees exempt from the State Employee Grievance Procedure Act).

The Agency may implement a reduction in force for one or more of the following four reasons:

- A. Reorganization;
- B. Work Shortage; or
- C. Loss of Funding; or
- D. Outsourcing/Privatization.

II. Management Decisions

The Agency shall determine the following items prior to developing the reduction in force plan:

- A. What is the reason(s) for the reduction in force;
- B. What areas(s) of the agency are to be impacted by the reduction in force [Competitive Area(s)];
- C. What State class title(s) within the competitive area(s) are to be affected [Competitive Group(s)]; and
- D. How many positions in each State class title(s) are to be eliminated.

III. Competitive Area(s)

The Agency shall determine the competitive area(s) the reduction in force will impact. The Agency should establish a competitive area that is clearly distinguishable from the staff in other areas and where the interchange of employees would not be practical. This competitive area may be the entire agency, a department, a unit, or a geographical location.

IV. Competitive Group(s)

The Agency shall determine the competitive group(s) based on the State class title(s) within the competitive area(s) that the reduction in force will affect. 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 (e.g., 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 (e.g. Administrative Assistant, Communications Coordinator, Program Coordinator II, Program Manager I).

V. Position Identification

The Agency shall identify the position(s) within the competitive area(s) and competitive group(s) by identifying the following information:

- A. State Class Title;
- B. State Class Code;
- C. Pay Band, if applicable;
- D. Total number of positions in the State class title within the competitive area; and
- E. Total number of positions in the State class title within the competitive area to be eliminated.

VI. Retention Points

The Agency shall calculate retention points for covered employees in the competitive area(s) and competitive group(s) to be used in determining which covered employees are to be involuntarily demoted, reassigned, have reduced hours or separated. Retention points shall be 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

The Agency will determine the total score for an annual performance rating by using the following numerical values assigned to the EPMS performance ratings. The table below is used for those employees receiving evaluations prior to the effective date of this policy.

Substantially Exceeds Performance Requirements	3
Exceeds Performance Requirements	2
Meets Performance Requirements	1
Below Performance Requirements	0

Any evaluations completed after the effective date of this policy, will use the following values:

Exceptional	3
Successful	1
Unsuccessful	0

The point values for each rating will be computed using the rating scale that was in place at the time of the specific EPMS evaluation.

For employees who have transferred to this 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.

For any year in which the employee does not receive an actual evaluation with a rating, the employee will receive a Successful rating for that year; 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

Covered employees will receive one retention point for each year of continuous State service after completion of a 12-month probationary period. Six months or more of continuous State service will be considered as one year of service and less than six months of service will receive no retention points.

C. Exception to Procedure for Retention Point Calculation

If every position in the competitive area is being eliminated, the agency is not required to calculate retention points. For positions reestablished

within one year of the RIF, in the same competitive area and in the same state class title, the agency must calculate retention points at the time of recall. The agency must calculate retention points using continuous state service and performance appraisal points based on the effective date of the reduction in force.

VII. Sequence of Reduction in Force

The order of the reduction in force of covered employees in each State class title(s) shall be determined by the total number of retention points for each employee. 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 covered employee with the earlier agency hire date will be retained. If after using the agency hire date to determine the order of affected employees a tie still exists, the agency *<choose appropriate language outlining the agency's plan to use a non-discriminatory, random method to break the tie including specific details regarding the determination of what covered employee will be retained.>*

Bumping rights are provided for covered employees who have accumulated more retention points than those with whom they are competing. Under no circumstances can an employee gain from a reduction in force. Bumping rights are provided only downward.

VIII. Retention of Necessary Qualifications

No employee with a lower number of retention points shall be retained in preference to another 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.

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. The Agency may determine that 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.

When a Retention of Necessary Qualifications is used in a reduction in force plan, justification for this retention must be documented and approved by the Agency prior to submitting the reduction in force plan to the Division of State Human Resources for review and approval for procedural correctness. The Agency should retain documentation to support any retentions made on this basis.

IX. Writing the Reduction in Force Plan

Once the Agency has made the decisions outlined above and prior to the implementation of a reduction in force, the Agency Director or his designee shall develop the reduction in force plan. This plan must include the following:

- A. The reason for the reduction in force;
- B. The identification of the competitive area(s);
- C. The identification of the competitive group(s) [State class title(s)];
- D. The number of position(s) to be eliminated in each State class title;
- E. A list of the covered employees, in order of retention points, in the competitive area(s) and competitive group(s) to include the following:
 - 1. Name;
 - 2. Age, Race, and Gender; and
 - 3. Retention Points;
- F. Justification of any Retention of Necessary Qualifications used in the reduction in force plan; and
- G. The Agency's efforts to assist employees affected by the reduction in force.

X. Approval Process

Once the reduction in force plan has been completed, the Agency shall submit the following information to the Division of State Human Resources for review and approval for procedural correctness:

The reduction in force plan as outlined in Section IX;

- A. An organizational chart including each position (designated with the State class title and incumbent's name) within the competitive area(s);
- B. A copy of the Agency's reduction in force policy; and
- C. A sample letter to employees affected by the reduction in force including information as outlined in Section XI, along with:
 - 1. A list of the employee's recall and reinstatement rights;
 - 2. The Agency's procedure for the recall of an employee; and
 - 3. The employee's grievance rights.

XI. Implementation of the Reduction in Force

The Agency shall communicate the following information to each affected employee after the Division of State Human Resources approves the reduction in force plan for procedural correctness and before the reduction in force becomes effective:

- 1. The reason for the reduction in force;

2. The competitive area(s) and competitive group(s) in which the employee competed;
3. The benefits to which the employee is entitled and the manner in which the reduction in force will affect the employee's State benefits, (e.g., health insurance, optional life insurance, retirement);
4. The employee's reinstatement rights, (e.g., 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);
5. 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;
6. The manner in which the Agency will notify the employee of any such vacancies; and
7. The requirements of S.C. Code of Laws Ann. Section 8-11-185, which requires the Agency to report information about the employees separated in a reduction in force to the Division of State Human Resources Division.

XII. Recall and Reinstatement Rights

An employee affected by a reduction in force has recall and reinstatement rights to a position in State government for one year after the effective date of the reduction in force.

A. Recall Rights

If a vacancy occurs within the competitive area which is in the same State class title as the position the employee held prior to the reduction in force, the Agency will recall employees in the inverse order of the reduction in force. The Agency will notify the employee in writing of the job offer and recall rights. If the employee does not accept the job offer within ten days, the employee's recall rights are waived. Should the employee accept the job offer, the Agency will reinstate the employee's accumulated sick leave, and will provide the employee the option of buying back all, some, or none of his 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 employee will also be offered insurance benefits as a new hire. The recalled employee may purchase retirement service credit under the leave of absence provision in Section 9-1-1140(D) for the period of time that the 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

An employee separated by a reduction in force may apply for any State job for which he meets the minimum training and experience requirements. Should the separated employee accept a job offer to an FTE position, the Agency will reinstate the employee's accumulated sick leave, and will provide the employee the option of buying back all, some, or none of his 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 employee will also be offered insurance benefits as a new hire. The reinstated employee may purchase retirement service credit under the leave of absence provision in Section 9-1-1140(D) for the period of time that the 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. If the employee is reinstated to another position, he still retains his recall rights to a position in the same State class in the competitive area.

XIII. Grievance Rights

A covered employee who is affected by a reduction in force has the right to file a grievance to the Agency and an appeal to the State Human Resources Director only if the grievance or appeal is based on improper or inconsistent application of a reduction in force policy or plan.

Tool Box Options for Reduction in Force Policy Development

State agencies have the option to establish different provisions in their reduction in force policies. An agency may determine that using any or all of the following options would assist the agency in administering a reduction in force. If an Agency chooses to use any of these options, they must be incorporated into the Agency's Reduction in Force Policy and be approved by the Division of State Human Resources.

AGENCY'S DIFFERING POINT VALUES FOR PERFORMANCE RATINGS

(Refer to Reduction in Force Model Policy, Section: VI Retention Points)

An Agency has the option of placing a greater emphasis on the performance component rather than continuous state service component of the total retention points. An Agency may assign a higher point value to the EPMS performance ratings than those in the model policy.

To establish point values different from those in the Model Policy, the desired point value for each level of performance rating must be included in Section VI of the Model Policy.

AGENCY'S DIFFERING LEVELS OF PERFORMANCE RATINGS

(Refer to Reduction in Force Model Policy, Section: VI Retention Points)

Any agency that is using a greater or fewer number of levels of performance than the State's standard three levels of EPMS ratings, as approved within its agency EPMS policy, must establish a conversion chart to correlate the agency levels of performance to the standard levels of performance in the State Employee Performance Management System. If the change in the agency's rating levels occurred during a time period that will be included in calculating the performance credit calculations, points for the levels of ratings prior to the conversion and after the conversion must be included in the policy. The point values for each rating will be computed using the rating scale that was in place at the time of the specific EPMS evaluation.

If the agency has changed the levels of performance ratings, these changes should be reflected in Section VI of the Model Policy.

AGENCY'S DIFFERING POINT VALUES FOR CONTINUOUS STATE SERVICE POINTS

(Refer to Reduction in Force Model Policy, Section: VI Retention Points)

An Agency has the option of placing a greater emphasis on the performance component rather than continuous state service component of the total retention points. An Agency may assign a higher point value to the EPMS performance ratings than those in the model policy.

Tool Box Options for Reduction in Force Policy Development

To establish point values different from those in the Model Policy, the desired point value for each level of performance rating must be included in Section VI of the Model Policy.

ADDITIONAL RETENTION POINTS FOR COMPETITION IN A LOWER BAND

(Refer to Reduction in Force Model Policy, Section: VI Retention Points)

An agency may add extra retention points to covered employees who are bumped from a position in a higher pay band to compete with others within a lower pay band. Agencies have the option to determine how many retention points shall be added for this purpose.

Should an agency wish to establish such a provision, the following language could be added to the end of Section VI of the Model Policy.

Sample Language

When a covered employee is bumped from a position with a higher pay band in a state class title series or the <agency name> established normal career path of state class titles to compete with others for a position in a lower pay band, covered employees will receive an additional two (2) retention points.

CONTINUOUS STATE SERVICE CREDITS

(Refer to Reduction in Force Model Policy, Section: VI Retention Points b. Continuous State Service Credits)

Agencies have the option to determine the number of retention points to be awarded for each year of continuous state service. Should an agency wish to change this provision, the number of retention points should be inserted in Section VI of the Model Policy.

TIEBREAKER METHOD

(Refer to Reduction in Force Model Policy, Section: VII Sequence of Reduction in force)

Agencies have the option to select the tiebreaker method used to determine the final sequence of reduction in force. If after using the agency hire date to determine the order of affected employees a tie still exists, the agency should choose a non-discriminatory, random method to break the tie.

The appropriate language outlining the agency's plan to use a non-discriminatory, random method to break the tie should be added to Section VII of the Model Policy. This language must *include specific details regarding the determination of what covered employee will be retained.*) *Some examples of non-discriminatory, random methods may be as follows:*

- *If after using the agency hire date to determine the order of affected employees a tie still exists, the agency will use a computer generated random number method to break the tie. The employee with the lowest/highest <choose whether lowest or highest number> randomly generated number will be retained.*

Tool Box Options for Reduction in Force Policy Development

- *If after using the agency hire date to determine the order of affected employees a tie still exists, the agency will place the names of those employees with whom the tie exists in a hat. The name(s) drawn from the hat will be retained.*
- *If after using the agency hire date to determine the order of affected employees a tie still exists, the agency will have those employees with whom the tie exists select a card from a standard deck of cards. The employee(s) who selects the highest card from the deck, with the Ace being the highest card, will be retained.*

EMPLOYEE RESPONSE TIME

(Refer to Reduction in Force Model Policy, Section: XII Reinstatement Rights a. Recall Rights)

In the event that an employee is recalled to a position, the Agency may determine the number of days an employee has to respond to the job offer. The number of days allotted should be inserted in Section XII of the Model Policy.