Department of Human Resources

POLICY

Approved by: Rebecca R. Hunter, Commissioner	**Policy Number:** 12-061 (Rev. 2/15)
Signature: Rebecca R Hunter	**Supersedes:** 09-021, 11-061, 12-061
Application: Executive Branch Agencies, Human Resource Officers	**Effective Date:** February 1, 2015
Authority: T.C.A. § 4-3-1703, T.C.A. § 8-30-104, T.C.A. § 8-30-314	**Rule:** Chapter 1120-02 and Chapter 1120-03

Subject:

Reduction in Force Procedures

Pursuant to Tenn. Code Ann. § 8-30-314, a reduction in force (RIF) occurs when a preferred service employee is subject to layoff due to a lack of funds, a reduction in spending authorization, lack of work, efficiency or other material change in duties or organization. Only preferred service employees are subject to the laws, rules, and policies regarding reduction in force.

Required Notice to the Department of Human Resources (Department)

An appointing authority shall determine the extent, effective dates, the classifications affected, and the number of employees laid off in each classification and each county to which a reduction in force applies. The appointing authority shall submit formal written notification, which becomes the agency's Reduction in Force plan, to the Commissioner of the Department of Human Resources (Commissioner), which shall provide the following information:

1. The reason for the reduction in force;
2. A listing of the affected classification(s), county location(s), and the number of preferred employees in each classification/county; and
3. Information regarding the factors used in determining the layoff, specifically detailing that the agency considered performance, seniority, abilities and discipline.

The Commissioner must acknowledge the agency's plan before an agency may begin implementation of a reduction in force, which includes delivery of any written notices to the affected employees. Once acknowledged, the Department shall notify the members of the Tennessee General Assembly who represent the affected county(ies) of the pending reduction in force, if such reduction affects 25 or more employees.

Determining a Layoff

In determining a layoff, the appointing authority must identify all employees within the agency, within the affected classification and within the affected county. Once the affected classification(s) has been identified, the agency shall consider performance as the primary factor in determining which individuals may be affected by the reduction in force. Thereafter, consideration shall be given to an individual employee's seniority, abilities and/or disciplinary record.

In considering performance, the agency shall evaluate the most recent completed annual performance documents of all employees in the affected classification. The agency shall determine if the relevant performance documents are sufficient under the Rules of the Department of Human Resources 1120-05. If such documents are not compliant with these rules and associated policies, the agency may not use performance as a factor in determining the layoff. If such documents are compliant, the agency shall submit to the Department a list of the affected employees and copies of each employee's relevant performance documents. An agency may not use performance as a factor in determining the layoff until the Department analyzes the submitted documentation and approves the use of performance in establishing the layoff. If approved by the Department, the agency shall give notice to affected employees that performance is being used as a factor in the reduction in force.

Seniority shall be determined based on an employee's total months of state service as defined in Tenn. Code Ann. § 8-30-102. For purposes of seniority as a consideration for a reduction in force, employees with veteran's status shall have an additional sixty (60) months of service credit added to his or her total months of state service. Eligibility for veteran's status is determined pursuant to Tenn. Code Ann. § 8-30-307. The agency shall give notice to affected employees that seniority is being used as a factor in the reduction in force.

For the purpose of reduction in force, "abilities" is defined as demonstrating the knowledge and skills necessary to perform a physical or mental activity. Typically, abilities are apparent through functions completed on the job. An agency may consider abilities only when a job specification with the specific knowledge, skills, abilities, and competencies for the classification has been approved by the Classification/Compensation Division. In considering abilities as a factor in determining a layoff, the agency must identify the specific abilities associated with each position. When submitting an agency Reduction in Force Plan, the appointing authority shall provide a listing of the abilities required for each position and attach any relevant documentation, if applicable. If the use of abilities is approved by the Department, the agency shall give notice to affected employees that abilities will be used as a factor in the reduction in force.

When considering discipline as a factor in determining the layoff, only disciplinary actions issued within the past two (2) years will be considered as follows:

a. Demotions; then
b. Suspension without pay three (3) days or more; then
c. Suspensions without pay of less than three (3) days.

The agency shall give notice to affected employees that discipline is being used as a factor in the reduction in force.

The agency shall maintain any documentation used in determining the layoff and shall be responsible for resolving any disputes arising from such decisions.

Required Notice to Employees

A preferred service employee who is subject to layoff as the result of a reduction in force shall be provided written notice from the appointing authority containing the reason for the layoff at least thirty (30) days prior to the effective date of the layoff. The notice shall also contain information as to which factors were utilized in determining the layoff. Employees and agencies are encouraged to use this notice period for career counseling and placement efforts.

Agencies shall hand-deliver the reduction in force notice to the employee, who must acknowledge receipt by signing and dating the notice at the time of hand-delivery. If an agency is unable to hand-

deliver the notice, the agency may mail the notice to the employee retaining documentation regarding the date the notice was mailed. The notification period shall begin upon actual receipt as indicated by the signature and date if hand-delivered, or three (3) days after the notification is mailed to the employee.

Employees serving an initial probationary period, executive service employees and employees serving in interim, emergency, part-time, seasonal, temporary or 120-day appointments are not covered by the provisions of Tenn. Code Ann. § 8-30-314 and shall receive a standard notice of expiration of appointment. These employees are not eligible for notice as outlined in Tenn. Code Ann. § 8-30-314. Initial probationary employees receiving an expiration of appointment must actually separate from the agency prior to the end of the employee's initial probationary period.

Agencies shall provide a copy of all RIF-related correspondence delivered to employees affected by a reduction in force to the Technical Services Division within two (2) workdays from the date of receipt if hand-delivered or from the date the notice is mailed to the employee. The agency shall include the employee's Edison employee identification number (Empl ID) in the top right-hand corner of each page. The Technical Services Division will review each letter to ensure that employees are included on the layoff list.

Agencies may obtain sample letters to employees affected by a reduction in force from the Employee Relations Division.

Requirements for Processing Reduction in Force Transactions

Pursuant to Tenn. Code Ann. § 8-30-314, a preferred service employee who is laid off because of a reduction in force shall receive his or her final paycheck, including accumulated leave, no later than thirty (30) days after the date of layoff. In order to meet this provision, the agency shall submit each employee's personnel file and all required documents to the Technical Services Division within three (3) workdays from the date of layoff. The agency must also submit a copy of the employee's official reduction in force notice and a supplemental pay request for any applicable severance. The transaction shall be entered into Edison as a "RIF" with an effective separation date no less than thirty (30) days from the date of the reduction in force notice. Agencies should include the message "RIF RELATED" in the comments box of the employee transaction resulting from a reduction in force when entered into Edison.

Transactions for employees who are transferred or appointed into other positions must be made in accordance with the applicable laws, rules, and policies.

Layoff List

The Department shall compile and maintain a list containing the names of all preferred service employees affected by a reduction in force. After placement on the layoff list, the Department will request that the individuals select up to four (4) additional counties where they are willing to work, if any. Individuals shall remain on the layoff list for a period of one (1) year from the date of the reduction in force notice or until they accept an offer of employment in the state service.

Requirements for Filling Vacant Preferred Service Positions

When filling a vacant preferred service position, the agency shall first review the layoff list and determine if the list contains any individuals for the job classification and county where the vacancy exists. If so, the agency must send those individuals an offer to apply for the vacancy and must extend an offer to interview to anyone who appears on both the layoff list and referred list. Those interviewed

from the layoff list must be considered, along with any other eligible candidates the agency interviews for the position. The agency may select the individual from the referred list who best meets the knowledge, skills, abilities, and competencies identified for the position. The agency must maintain documentation of all interviews for three (3) years after the appointment of an individual to the position.

When the transaction is entered to fill the vacant preferred service position, the agency shall submit along with other required documentation, a copy of the coded layoff list signed by the appointing authority or his or her designee. The agency must identify those individuals on the layoff list who elected not to apply, those who appeared on the referred list but elected to not accept an interview, and those who were interviewed but were not selected for the vacancy. Along with the signed and coded layoff list, the agency must submit copies of all notices to individuals on the layoff list offering an opportunity to apply for the vacancy and copies of notices offering interviews to those who appeared on both the layoff list, and the referred list. If an individual on the layoff list is appointed to the vacancy, the agency shall submit a copy of the applicable page from the layoff list with the individual coded with a "30" and signed by the appointing authority or their designee. The Technical Services Division shall remove the individual's name from the layoff list after the appointment is processed.

Abolishing Positions as a Result of Reduction in Force

Prior to the abolishment of a position, agencies shall submit to the Classification/Compensation Division a document detailing the position numbers and class titles of positions to be abolished. This document must be approved by the Budget Division of the Department of Finance and Administration and delivered to the Classification/Compensation Division within two (2) weeks of budget approval.

Questions regarding reduction in force policy and procedures may be directed to the Employee Relations Division. Questions regarding reduction in force related transactions and the layoff list may be directed to the Technical Services Division. Questions regarding abolishing positions may be directed to the Classification/Compensation Division.