

**SECTION 30. REDUCTION-IN-FORCE**

(As amended May 20, 2010, July 12, 2011, and June 30, 2015)

**30-1. Definitions.**

- (a) ***Affected class:*** An occupational class or a group of occupational classes in a department that:
  - (1) includes a position that the department director intends to eliminate; and
  - (2) the elimination of the position may cause an employee in the class to be demoted or terminated. An *affected class* includes all classes in an occupational series at and below the budget level class.
- (b) ***Affected employee:*** An employee assigned to a position in an affected class who has received a notice of intent or notification of a RIF.
- (c) ***Alternative placement:*** The process of assisting affected and displaced employees to find employment in other merit system positions.
- (d) ***Class:*** As used in this section, all positions in an occupational class and all occupational classes in an occupational series at or below the budget level that share a common work year, such as full-time year-round positions, full-time school-year positions, part-time year-round positions, or part-time school-year positions.
- (e) ***Discontinued service retirement:*** A pension benefit described in Section 33-45(d) of the County Code that may be granted to certain members of the Employees' Retirement System whose employment is terminated by an administrative action.
- (f) ***Displaced employee:*** An employee who is demoted or whose County government employment is terminated because of a RIF.
- (g) ***Excluded employee:*** An employee who is not eligible for priority consideration under RIF procedures.
- (h) ***Notice of intent:*** A letter that the OHR Director sends to an employee in an affected class before a RIF to tell the employee of the potential RIF and that the employee is entitled to priority consideration.
- (i) ***Notification:*** A letter from the OHR Director that tells an employee that the employee will be terminated because of RIF.
- (j) ***Priority consideration:*** As used in this section only, the right of an affected or displaced employee to be considered for a vacant position for which the employee

is qualified, if the position sought is at or below the grade of the affected or displaced employee.

- (k) **Priority eligible list:** A list of employees who are eligible to receive priority consideration for a specific vacant position.
- (l) **Qualified:** As used in this section only, a determination made by the OHR Director that an individual:
  - (1) meets the minimum qualifications for the position; and
  - (2) has the documented knowledge, skills, and abilities that an employee must have to satisfactorily perform the duties of the particular position, but which may not be required for satisfactory performance in every position in the class.
- (m) **Reemployment list:** A list of all displaced employees who are eligible for priority consideration.
- (n) **Seniority:** The total length of time that an individual has been a County employee in full-time and part-time positions. This does not include:
  - (1) time spent as a temporary employee;
  - (2) time in a non-pay or LWOP status that exceeds 10 workdays, unless the employee was in a non-pay or LWOP status while:
    - (A) on FMLA leave under Section 19;
    - (B) on military leave under Section 22;
    - (C) performing the duties associated with the employee's elected position as a member of the Maryland General Assembly while the General Assembly is in session; or
    - (D) on a furlough day under this Section.
- (o) **Service needs:** Specialized duties or functions that must be performed by an employee in an affected class but which are not performed by all employees in the affected class in the department. Service needs involve knowledge, skills and abilities that are required for satisfactory performance of the specialized duties or functions.
- (p) **Severance pay:** Additional compensation granted to certain probationary employees and certain employees in the Retirement Savings Plan whose employment is terminated by a RIF or other administrative action.

- (q) ***Status characteristics:*** The conditions of an individual's County employment as reflected by the employee's grade, salary, merit system status, and number and distribution of work hours.

### **30-2. Policy on RIF.**

- (a) The abolishment of a temporary position is not a RIF. The abolishment of a term position created for a specified period of time or term is not a RIF if the position is abolished at the end of the term. However, a term employee is treated the same as any other merit system employee subject to RIF if:
- (1) the employee's position was not created for a specified time or term; or
  - (2) the employee's term is not completed.
- (b) If RIF is necessary, a department director must base the transfer, demotion, or termination of an employee on one or more of the following:
- (1) service needs;
  - (2) seniority; or
  - (3) performance.
- (c) If a position is abolished in a department or office, only the employees in the same occupational class and department as the abolished position are subject to the RIF.
- (d) A department director may not remove an employee with merit system status if there is:
- (1) a temporary employee in the same class in the department; or
  - (2) a probationary employee in the same class in the department.
- (e) A department director should exhaust the following alternatives to RIF before instituting a RIF if the alternative is reasonable under the circumstances:
- (1) effective position management;
  - (2) employee placement;
  - (3) reducing employee work hours;

- (4) changing the status of employees from full-time to part-time or from part-time to full-time
- (5) restructuring positions; and
- (6) retraining incumbent employees.
- (f) A department director must conduct a RIF in a manner that:
  - (1) reduces the negative impact on employees to the greatest extent that is reasonable under the circumstances; and
  - (2) is consistent with the County's commitment to equal employment opportunity and diversity.
- (g) When conducting a RIF, a department director must make every effort to maintain or restore, but not to improve, the employment status of affected employees.

### **30-3. Pre-RIF alternatives.**

- (a) The department director and OMB Director must notify the OHR Director of:
  - (1) the circumstances that may lead to a RIF; and
  - (2) the number of positions to be abolished in each affected class.
- (b) The OHR Director must recommend position management and alternative placement strategies for employees, which may include allowing only affected employees to apply for vacancies in the department.
- (c) The OHR Director must determine the date for completion of all alternatives to RIF.
- (d) As an alternative to RIF, the CAO may furlough employees.

### **30-4. Conducting a RIF.**

- (a) The department director and OMB must determine the number of positions to be abolished.
- (b) For each affected class, the department director must:

- (1) abolish temporary positions before abolishing career (full-time or part-time) positions; and
  - (2) remove temporary employees and probationary employees before identifying employees with merit system status for displacement.
- (c) The department director must identify employees within an affected class for displacement based on seniority as calculated under Section 30-6.
- (d) The OHR Director must issue a notice of intent to each employee in an affected class advising the employee that:
- (1) employees in the affected class may be terminated; and
  - (2) affected employees are entitled to placement on priority eligible lists. The notice of intent may be sent by certified mail or delivered to each employee personally.
- (e) The OHR Director must establish a freeze on filling vacant positions in affected classes in affected departments.
- (f) The OHR Director must help affected and displaced employees find alternative placement and may offer other services as needed, such as:
- (1) training in resume preparation, job search skills, and interview techniques;
  - (2) financial counseling; and
  - (3) counseling on benefits.

### **30-5. Calculation of seniority in a RIF.**

- (a) A department director must calculate seniority for all affected employees with merit system status in the department and class by:
- (1) giving seniority credit for continuous County employment from the date of initial employment in a full-time or part-time position to a fixed date established by the OHR Director;
  - (2) giving seniority credit for past periods of employment in a full-time or part-time County position if the employee had a break in service;
  - (3) prorating seniority for part-time employees based on the number of hours worked per week;
  - (4) giving an employee up to 5 years of seniority credit for periods of military service as required under Section 22 of these Regulations; and

- (5) giving an employee seniority credit for service before 1989 as a paid firefighter for a Montgomery County volunteer fire corporation.
- (b) A department director must also give additional seniority credit to an affected employee or deduct seniority credit based on the employee's average overall performance rating over the 3 most recently completed rating periods. The department director must calculate the number of extra months of seniority credit by:
- (1) giving the employee 24 extra months of seniority for each time the employee received an overall rating of *Exceptional Performance* or an equivalent rating;
  - (2) giving the employee 12 extra months of seniority for each time the employee received an overall rating of *Highly Successful Performance* or an equivalent rating;
  - (3) giving the employee no extra months of seniority credit if the employee:
    - (A) received an overall rating of *Successful Performance* or an equivalent rating; or
    - (B) did not receive an overall rating during the most recently completed rating period;
  - (4) deducting 12 months of seniority from the seniority calculated under (a) if the employee received an overall rating of *Does Not Meet Expectations* or an equivalent rating; and
  - (5) dividing the total extra months of seniority by 3 to determine the additional months of seniority that the employee must receive.
- (c) A department director must give an employee in an affected class who has been employed for less than 3 years:
- (1) the average extra months of seniority credit for the employee's last 2 overall performance ratings; or
  - (2) extra seniority credit for one overall performance rating, as appropriate.
- (d) The department director must not give affected employees seniority credit or deduct seniority credit based on performance unless the performance evaluation plan used by the department for the last 3 years:
- (1) includes 4 rating categories;

- (2) was used uniformly to evaluate the performance of employees in the affected class;
  - (3) is consistent with Section 11 of these Regulations for non-bargaining unit employees; and
  - (4) is consistent with the appropriate labor agreement for bargaining unit employees.
- (e) To break a tie, the department director must use seniority within the affected class, as calculated above using employee performance ratings.
  - (f) The OHR Director must certify the department director's final seniority calculations and confirm that the department director complied with (c) above.
  - (g) Based on the certified final seniority calculations, the department director must displace employees in an affected class with merit system status by inverse seniority until the total number of positions to be abolished has been reached.

**30-6. Service needs exception.**

- (a) A department director may request an exception to the use of inverse seniority to displace employees in order to maintain the employment of employees in certain positions within a class that require unique knowledge, skills, and abilities that are not required for every position in the class and that cannot be acquired by other employees in 6 months or less.
- (b) To request a service need exception, the department director must:
  - (1) submit a written request for an exception to the OHR Director;
  - (2) provide documentation that shows how the position differs from others in the class and department; and
  - (3) substantiate the service need for the position.
- (c) The OHR Director must approve or deny the request for a service need exception after conducting a careful analysis of:
  - (1) the tasks performed by the employees in the positions that are the subject of the request;
  - (2) the required qualifications for the positions; and
  - (3) the qualifications of the other employees.

**30-7. Use of discontinued service retirement in a RIF.**

- (a) A department director may request a discontinued service retirement for one or more incumbents of an affected class who are eligible under Section 33-45(d) of the County Code. The department director must submit a written request for a discontinued service retirement to the OHR Director.
- (b) A department director must not request more discontinued service retirements than the number of department positions to be abolished.
- (c) A department director must offer discontinued service retirements to employees on the basis of seniority. If 2 employees have the same amount of seniority, the department director must use service need as the basis for determining who receives the discontinued service retirement.
- (d) If the employee selected for the discontinued service retirement is not the most senior employee, the department director must submit written documentation to the OHR Director showing that more senior employees within the affected class were offered the retirement but refused it.
- (e) The employee and department director must agree that the discontinued service retirement is in the best interest of the employee and the County.
- (f) Following approval by the OHR Director, the employee must file an application for discontinued service retirement with OHR.

**30-8. Notification of termination resulting from RIF.** The OHR Director must:

- (a) give at least 30 calendar days written notice to an employee whose employment will be terminated;
- (b) send the notice by certified mail or hand-deliver it directly to the affected employee;
- (c) give an employee who is to be displaced the option of termination or placement in LWOP status for a period of one year or less; and
- (d) include in the notice a statement of the employee's appeal rights and the time limit for filing an appeal.

**30-9. Priority consideration resulting from RIF; reinstatement of displaced employees.**

- (a) ***Meaning of "employee"***. In this subsection, "employee" includes a former employee who was terminated in a RIF and who has priority consideration and reinstatement rights.
- (b) ***Eligibility for priority consideration.***



- (1) The OHR Director must give priority consideration to an employee with merit system status:
    - (A) who was given a notice of intent that is not yet rescinded;
    - (B) whose employment is terminated as the result of RIF;
    - (C) who took a voluntary demotion because of a RIF; or
    - (D) who took a temporary position after being displaced from a permanent position in a RIF.
  - (2) An employee is entitled to priority consideration for announced vacancies in the same branch of government as that from which the employee was affected or displaced. However, an employee of the Legislative or Judicial branches hired before August 1, 1983, is entitled to priority consideration for announced vacancies in all branches.
  - (3) The OHR Director must place an affected employee on a priority eligible list if the employee applies for a position for which qualified, successfully completes any required routine medical or skills examinations, and the position is at or below the grade held by the employee when affected by RIF, subject to the provisions of Section 33-7(b)(4) of the Montgomery County Code.
  - (4) The OHR Director must determine if an affected employee is qualified for the position upon reviewing the individual's experience, education, and training.
- (c) ***Displaced employees who are not eligible for priority consideration.*** Temporary and probationary employees whose employment is terminated because of a RIF are excluded employees who are not entitled to priority consideration.
- (d) ***Reinstatement of displaced employees.***
- (1) A department director must reinstate employees from the department who were terminated or demoted to vacant positions in the class from which the employees were terminated or demoted.
  - (2) The department director must reinstate employees in inverse order of their identification for displacement.
  - (3) The displaced employee's right to reinstatement to a position in the occupational class and department from which the employee was displaced supersedes the right of a displaced employee from another occupational class or department for priority consideration.

- (4) A full-time or part-time employee who is displaced in a RIF and who takes a temporary position to avoid termination is entitled to priority consideration and reinstatement to a permanent position.
- (e) ***Duration of priority placement or reinstatement rights.*** An employee has a right to priority placement for 2 years after the effective date of termination or demotion or until the employee has been successfully placed 3 times, including the initial placement, whichever comes first.
- (f) ***Priority eligible list as only permissible way to fill a vacant position.*** A department director must not fill a vacant position by any other means if there is a qualified applicant on a priority eligible list for that position.
- (g) ***Order of priority in filling vacant positions.***
- (1) A full-time affected employee who is entitled to priority consideration has priority over a part-time affected employee for full-time vacancies.
  - (2) A part-time employee who is entitled to priority consideration has priority over a full-time affected employee for part-time vacancies.
  - (3) An affected employee who is not in a term position and who is entitled to priority consideration has priority for vacant non-term positions over an affected employee in a term position.
  - (4) An affected employee in a term position who is entitled to priority consideration has priority for vacant term positions over an affected employee who is not in a term position.
  - (5) A full-time employee who is placed in a part-time position in a RIF has priority over a part-time employee for full-time positions.
  - (6) The OHR Director must ensure that an affected employee who is placed on a priority eligible list receives priority consideration in the order described in Section 6-10 of these Regulations.
  - (7) If more than one affected employee claims priority for an announced vacancy, the department may choose the candidate with the overall qualifications best suited for the position, regardless of the seniority of the affected employees who applied for the vacancy.
- (h) ***Time limit for accepting an offer of appointment.*** An employee who receives an offer of appointment to any position for which the employee applied using priority consideration must accept or reject the offer within 7 calendar days or the employee will be removed from the priority eligible list for that position.

- (i) ***Employee's refusal of reinstatement to equivalent job.***
  - (1) If a displaced employee refuses an offer of appointment to a position that has the same status characteristics as the position from which the employee was displaced, the OHR Director must:
    - (A) remove the employee from the reemployment list; and
    - (B) take away the employee's future priority consideration rights, unless the OHR Director allows the employee to remain on the reemployment list for good cause shown.
  - (2) If the employee wishes to keep priority consideration rights after refusing an offer of appointment to a position with the same status characteristics as the position from which the employee was displaced, the employee must submit a written request to the OHR Director within 5 days of rejecting the offer. The employee must explain the reason for refusing the job offer and why the OHR Director should allow the employee to remain on the reemployment list.
  - (3) The OHR Director may excuse a refusal only in unusual circumstances. The OHR Director's decision is final and an employee may not grieve the decision.
- (j) ***Responsibilities of OHR Director when RIF is concluded.*** At the conclusion of a RIF within a department, the OHR Director must rescind the notice of intent and priority consideration rights for affected employees who were not displaced.

### **30-10. Salary considerations.**

- (a) When a department director abolishes a position due to RIF at the beginning of a fiscal year, the OHR Director must ensure that general salary adjustments for affected employees are made effective before the personnel actions resulting from the RIF.
- (b) A department director must determine the salary of an employee under Section 10-5(c) or (d), as applicable, if the employee is:
  - (1) demoted as a result of a RIF; or
  - (2) promoted after being demoted as a result of a RIF.

### **30-11. Effect of RIF on benefits.**

- (a) If an alternative placement is not found for an employee before the termination date, the affected employee may choose to be terminated or take LWOP for up to one year. If the employee takes LWOP, the employee:

- (1) must leave employee contributions in the retirement system and will not accrue credited service during the period of LWOP;
  - (2) may continue to receive health insurance coverage for up to 20 months after beginning LWOP, by paying only the employee's share of the cost for the first 60 days of LWOP and by paying 102 percent of the total health insurance cost for the remaining 18 months;
  - (3) may accept an annual leave accumulation pay-off or let the annual leave remain in the employee's leave account while on LWOP;
  - (4) will not accrue sick and annual leave; and
  - (5) will not be credited with personal leave days or PTO during the period of LWOP.
- (b) If a terminated employee is a member of the Retirement Savings Plan, the County must, as provided under Section 33 of the County Code:
- (1) give the employee severance pay; and
  - (2) upon separation from County service, distribute the vested portion of the participant's account balance.
- (c) A terminated employee who is a vested member of the Employees' Retirement System may elect to leave all member contributions and interest in the fund or to have retirement contributions returned.
- (d) The County must return retirement contributions to a terminated employee who is a member of the Employees' Retirement System if the employee is not vested when the employee's position is abolished.
- (e) A terminated probationary employee may be entitled to severance pay under Sections 7-2(e) and 10-22(a) of these Regulations.
- (f) An employee in an affected class who takes a temporary position to avoid termination is entitled to the benefits and other terms and conditions of employment associated with the status of a temporary employee.
- (g) If a displaced employee returns from LWOP within one year or is rehired within 2 years after the effective date of termination, the employee is entitled to the benefits described below.
- (1) ***Annual leave.*** The County must ensure that:

- (A) the employee's annual leave balance is recredited to the employee if the employee did not receive payment for the leave balance before; and
  - (B) the employee accrues annual leave at the rate in effect at the time that the employee's position was abolished.
- (2) ***Sick leave.*** The County must ensure that the employee's sick leave is recredited.
- (3) ***Retirement.***
- (A) ***Optional or Integrated plans.***
    - (i) A vested member of the Optional or Integrated retirement plan (defined benefit plans) who left all member contributions and interest in the fund, may elect to remain a member of the Optional or Integrated plan or, if eligible, may transfer to the Retirement Savings Plan.
    - (ii) No service credit will be given for the time during which contributions were not made, but all prior credited service must be restored if retirement contributions have not been returned.
    - (iii) If an employee on LWOP was not vested when the employee's position was abolished, the employee may resume membership in the Optional or Integrated retirement plan if the employee returns to active County service within one year of beginning LWOP.
  - (B) ***Retirement Savings Plan.*** A member of the Retirement Savings Plan (defined contribution plan) may rejoin the Retirement Savings Plan if the employee meets the requirements for participation.
- (4) ***Group insurance.***
- (A) The OHR Director must ensure that a reinstated employee does not have to show proof of insurability before enrolling in a health insurance plan offered by the County.
  - (B) The OHR Director must determine which health benefit plans are available to a reinstated employee.
  - (C) When a reinstated employee retires, the OHR Director must give credit to the employee for all periods when the employee participated in the health insurance program in determining:

- (i) the length of time that the employee may participate County health insurance program; and
- (ii) the percentage of the health benefits cost that the employee must pay.

**30-12. Effect of RIF on probationary period.**

- (a) A merit system employee who is transferred or demoted because of a RIF does not serve an additional probationary period in the new position.
- (b) A former employee who was terminated because of RIF and who is later reinstated does not have to serve a new probationary period if the employee had completed the probationary period before the termination.
- (c) An employee who is demoted because of RIF and who is later promoted back to the level from which the employee was demoted does not have to serve a new promotional probationary period if the employee had completed the probationary period or promotional probationary period, as appropriate, before the demotion.

**30-13 . Noncompetitive reappointment or promotion of employees affected by RIF.**

- (a) An employee whose employment is terminated because of a RIF is eligible for noncompetitive reappointment under Section 7-5(a) of these Regulations.
- (b) An employee who accepts a demotion because of a RIF is eligible for noncompetitive promotion under Section 27-3(b)(2) of these Regulations.

**30-14. Appeal of RIF.**

An employee with merit system status who is demoted or whose employment is terminated due to RIF may appeal under Section 34 or 35 of these Regulations.

**Editor’s note** – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

<b>Bargaining unit</b>	<b>Articles of current agreements with references to reduction-in-force</b>
Firefighter/Rescuer	40, Employee Status

OPT/SLT	5, Wages, Salary and Employee Compensation 9, Working Conditions 27, Reduction-in-Force 30, Notices to Employees
Police	43, Discipline 50, Reduction-in-Force and Furlough 53, Performance Evaluation
Firefighter/Rescuer	48, Job Sharing Program 49, Compensatory Time
OPT/SLT	None
Police	18, Annual Leave 21, Compensatory Time 50, Reduction-in-Force and Furlough 55, Job Sharing Program

<b>Bargaining unit</b>	<b>Articles of current agreements with references to furlough</b>
Firefighter/Rescuer	48, Job Sharing Program 49, Compensatory Time
OPT/SLT	None
Police	18, Annual Leave 21, Compensatory Time 50, Reduction-in-Force and Furlough 55, Job Sharing Program