

FREQUENTLY ASKED QUESTIONS ON RIF AND INSURANCE

INTRODUCTION:

In order to assist you with your deliberations, we have provided basic RIF reminders. We encourage LEAs to review their local Reduction-in-Force (RIF) policies. It is also beneficial to review your decisions about a RIF with your legal counsel.

1. What is a reduction in force (RIF)?

A Reduction-in-Force (RIF) is essentially a decrease in the total number of employees of a local board of education. The reduction of employees can be the result of declining enrollments, reorganization, or a decrease in funding. Each local board of education should have a RIF policy in place and, ultimately, it is the local board of education that has final authority. Accurate and detail records of any employee impacted by a RIF must be kept by the school system for future reference or future reporting.

It is never easy or desirable to invoke a RIF. Each employee is subject to RIF but certain classifications of employees have more protection than others under the law. Local board of education RIF policies should be in compliance with state statutes.

2. What do the public school laws of North Carolina say about RIF?

The basic employment issues associated with RIF policies are found in the North Carolina General Statute 115C-325 (e)(1)(l) and 115C-325 (2). A RIF is a justifiable ground for dismissal or demotion of a career employee. The reference for this can be found in NCGS 115C-325(e)(1)(l). However, career employees dismissed or demoted as a result of a RIF do have some procedural protection, found in NCGS 115C-325(2). Among those procedural considerations are written notices to the employee(s), a right to a hearing before the board of education, and priority in re-employment in areas in which they are qualified.

3. Can administrators be included in RIF?

The short answer to this is yes. Assistant and Associate Superintendents may be subject to a RIF, but the conditions of their individual contracts may dictate the conditions in which they can be demoted or dismissed as a result of a RIF. Other contract administrators subject the Administrative Term Contract Law (115C-287.1) can be dismissed or demoted only in accordance with the terms and conditions as outlined for career employees. Basically principals, assistant principals, and other contracted administrators are to be treated the same as employees who have career status if the RIF occurs during the contract term period.

4. Can teachers and other certified employees on a tenure track be subject to a RIF?

During a probationary period, a probationary employee can be non-renewed for any reason at the end of their contract period for any reason, as long as that reason is not arbitrary, capricious or discriminatory, or for personal or political reasons {(115C-325(m)}. In short, at the end of the year or for any probationary teacher that is not under contract, there is considerable flexibility in

employment decisions. However, the demotion or dismissal of a probationary teacher during the contract period can only be done in compliance with the policies for those of a career teacher.

Career employees can only be dismissed or demoted for reasons outlined in 115C-325(e)(1)(I). One of those permissible reasons is a justifiable decrease in positions due funding reductions, reorganization, or decreased enrollment.

Three essential elements must be present in order for a RIF to occur.

1. A declaration that circumstances exist for a RIF,
2. A procedure exists for selecting personnel to be dismissed or demoted,
3. A procedure must be followed once a specific employee is selected for dismissal as a RIF.

It should be pointed out that any teacher, if probationary or career, who is dismissed as a result of a RIF, shall not have his or her name added to the Dismissed Teacher List {115C-333(d)}.

5. Does the statute apply to classified "at will" employees?

Yes. Employees in this category are employed at the will of the local board of education. Unless they are provided specific due process rights by the local board, these individuals are subject to dismissal as a part of a RIF according to any policy that the board chooses to adopt.

6. Do employees dismissed as results of a RIF have any additional benefits?

Employees dismissed as a result of a RIF do have certain benefits. Of course, some procedural protection for career employees is outlined in the Teacher Tenure Act. However, all employees subject to a RIF do have their accumulated annual leave and bonus leave paid upon separation. This payment for annual leave earnings cannot exceed 30 days of accumulation {115C-302.1(c2)}. In addition, if eligible for longevity pay, the employee is to receive this amount prorated to the amount earned based on their anniversary date. Sick leave is to remain on the employee's records for 60 months and may be re-instated if employed in the same or another LEA within the time allowed.

Any employee that is dismissed or loses his/her job as a result of a RIF is eligible for unemployment insurance. The LEA is to inform the employee of his/her right to apply for unemployment insurance and provide accurate information as required by the local or State Unemployment Insurance provider.

North Carolina General Statute 135-40.2(a)(b) provides additional benefits for employees impacted by a RIF. Employees whose jobs were eliminated as a result of a RIF are to maintain their health/medical insurance for one year. The cost of maintaining the individual's insurance is to be covered by the local educational agency.

7. Who is eligible for continued benefits?

Employees who were employed for 12 or more months, or school employees employed for 10 months, are eligible for continued benefits if his/her job was eliminated because of a reduction in funds.

8. How long will RIF benefits continue?

RIF benefits can continue indefinitely. The employer is only responsible for **health insurance** for the first 12-month period. Benefits apply only to the individual's insurance. Any dependent coverage is the responsibility of the employee. After the initial 12-month period, the employee may choose to continue to pay the premium.

9. Who pays the premium after the initial 12-month period?

Payment comes from the employer for the first 12-month period. After the initial period, the employee who wishes to continue coverage is to send the monthly premium to the employing unit. The employing unit is responsible for sending the premiums to the Claims processing Contractor with Blue Cross Blue Shield of North Carolina. In fact, RIF employees who continue coverage after the initial 12-month period remain on the unit rolls.

10. Is there a deadline for deciding on continued coverage?

The decision to continue coverage or not to continue coverage is to be made directly after termination of employment. This decision is binding and cannot be changed. Employees electing to discontinue coverage forfeit their right for coverage under the RIF privileges. Forfeiting RIF privileges also forfeits COBRA privileges. It is essential that these insurance coverage benefits be reviewed with the employee.

11. Who do we contact for more information and details?

Contacts should be made to the Claims Processing Contractor for the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan. The Membership services number is 1-800-245-7319, there's also a reserved line for agency representatives and Health Benefits Representatives that can be found with your employer information. You can visit the State Health Plan web site located at www.statehealthplan.state.nc.us.

12. Does a complete school year August 1, 2008 - June 9, 2009, satisfy the 12 months consecutive service employment requirement?

Yes, providing that it is not the first year for the 10 month employee. Effective June 30, 1995, employees with 12 months of service whose job are eliminated are eligible to continue coverage for up to 12 months on a non-contributory basis and on a contributory basis thereafter. Spouses

and dependent children of those employees are eligible for coverage on a contributory basis. After the 12 month period the process for continuation coverage will be the same as dental.

No, for a 10 month employee that has not worked 2 months in any other year prior to this RIF.

13. What is the difference, if any, in RIFing a probationary teacher vs. a career teacher?

None, if it is a RIF, the same criteria should be used. The benefits would be the same providing that the probationary teacher is not a first year 10 month employee.

14. Does RIF regulations only apply to certified employees, or does it also apply to non-certified employees.

The RIF regulations applies to both certified and non-certified employees.

15. Are there other benefits RIF employees are entitled to other than State Health Insurance.

- For certified, there are requirements in G.S. 115C-325 (See 115C-325(e) (2) on RIF).
- For non-certified employees see G.S.115C-45.
- For all employees check your LEA's policies regarding RIF.

16. Assuming a RIF employee receives health insurance benefits for 12 months, what happens after 12 months?

All guidance on COBRA can be found on the NC State Health Plan (SHPNC) website.

Q & A on COBRA <http://www.shpnc.org/hbr-updates/April-2009/faqs-cobra-subsidy-rif.pdf>

17. How is the determination made whether the position was eliminated due to a reduction of funding? (What is required to establish that there was another reason for the elimination of the position?).

The RIF action currently being experienced in the public school systems has been clearly defined due to financial crisis and budget constraints which was dictated in Executive Order 11 which later ratified into HB 917 taking measures to align the budget.

<http://www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H917v5.pdf>

18. Is the only difference in the determination of who qualifies for the COBRA subsidy, the 12 month working requirement of the general statute?

On February 17, 2009, when the American Recovery and Reinvestment Act of 2009 (ARRA) became law and the COBRA subsidy was created, employees employed 12 months or more would continue to have coverage for 12 months and employees with less than 12 months will have access to COBRA at a reduced rate for nine months.

19. What insurance premiums apply under the COBRA subsidy?

COBRA provides health insurance coverage, which does not include vision and dental. There are other plans available for vision and dental. This information should be obtained through your Health Benefit Representative (HBR).

Should you have any questions, please feel free to contact Joan Crump at jcrump@dpi.state.nc.us (919) -807-3366.