

WEST VIRGINIA STATE UNIVERSITY BOARD OF GOVERNORS

West Virginia State University

BOG Policy #4

Title: Reductions in Force and Layoffs

Section 1. General

- 1.1 Scope: This Policy establishes the process for the reduction in force or layoff of regular staff employees whose employment, if continued, accumulates to a minimum total of 1,040 hours during a calendar year and extends over at least nine months in a calendar year.
- 1.2 Exceptions: Part-time regular, casual, project, and/or temporary employees are not covered under the provisions of this Policy.
- 1.3 Authority: W. Va. Code §§ 18B-2A-4, 18B-3-3, and 18B-7-3
- 1.4 Passage Date: September 3, 2020
- 1.5 Effective Date: 30 days following passage

Section 2. Definitions

- 2.1 Affected Employee – An employee of the University who has been or will be involved in a workforce reduction action of the University.
- 2.2 Layoff – A reduction in the number of employees resulting in involuntary separation from employment or reduction in work schedule due to business necessity. A layoff is usually temporary, but may become permanent in certain circumstances, at the discretion of the University.
- 2.3 Reductions in Force – A separation from employment due to lack of funds, lack of work, redesign or elimination of position(s) or reorganization, with no likelihood or expectation that the employee will be recalled, because the position itself is eliminated. A reduction in force (RIF) may be necessary or appropriate when there is a redesign or elimination of work, redundancy in roles, or excess capacity within a work group or across work groups, such that it would be economically feasible and responsible to reduce the number of employees in a unit or department.

- 2.4 Workforce Reduction – An action that decreases the number of employees employed at the University, either through layoff or reduction in force, which action is taken out of business necessity in order to reduce the operational costs of the University.

Section 3. Policy Applicable to All Workforce Reductions

- 3.1 While West Virginia State University strives to provide a stable and secure environment in which to work, under certain circumstances, it may be necessary to lay off employees temporarily or eliminate employee positions due to budgetary needs, program reductions, reorganization, or for other business requirements. When a reduction in force or layoff occurs, the University will follow a defined course of action to ensure appropriate treatment of affected employees. This course of action ensures fairness and consistency, determines whether layoff or RIF is appropriate, determines which employees are subject to such workforce reduction action, and notifies employees in advance of any such reduction.
- 3.2 It shall be the policy of the Board of Governors to undertake workforce reductions in a consistent and equitable manner, in adherence to the provisions of W. Va. Code § 18B-7-3 and any other applicable provisions of State and federal law. To that end, following the decision that a financial condition necessitating a reduction in the University's labor budget exists, the President shall undertake program, administrative, and service reviews and consider all pertinent information in determining the best interests of the University as a whole. The President may recommend to the Board of Governors the elimination or reduction of programs or services deemed appropriate and necessary given financial, enrollment, and other relevant considerations. The primary consideration in any resulting decision to eliminate positions and/or to reassign or reduce the number of affected staff positions and personnel will be the preservation of the quality and effectiveness of the University's programs and overall mission.
- 3.3 When a unit or department becomes aware that there may be a need for a workforce reduction, the head of that unit or department shall contact Human Resources, which will guide the unit or department in assessing options and developing a plan for implementing the workforce reduction. The plan must be based on the work of the eliminated position(s) being reassigned to other position(s) or no longer being performed. If the unit or department determines the work needs to be resumed, the appropriate reduction measure is layoff. If the unit or department head determines that the work will not likely be resumed, the reduction measure is RIF. No workforce reduction action can occur without the approval of the President and the Board of Governors.
- 3.4 Institutional need for workforce reduction ultimately shall be determined by the President and the Board of Governors through careful analysis and consultation with University administrators in the affected unit(s) or department(s). This analysis shall determine which employees, units, departments, programs, services, etc. should be reduced:

- a. Identification of the positions within the affected unit(s) or department(s) to be eliminated;
 - b. Identification of the jobs and functions that will need to be performed after any reductions;
 - c. Assessment of competencies of affected staff;
 - d. Assessment of competencies of retained staff to perform the job duties and functions remaining; and
 - e. Opportunities for reassignment with other units or departments.
- 3.5 Notice – In the event of workforce reduction, either by reduction in force or layoff, the University shall notify the affected employees of such action in writing as soon as feasible, but not less than 30 days prior to the effective date of the action. The written notification shall include the reason for the action; the effective date of the action; the date the affected employee(s) is expected to return to work, if applicable; and the affected employees’ rights during the workforce reduction period, including severance benefits, if applicable. For employees not entitled to severance benefits, the notification must provide information on continuance of life and health insurance (COBRA).

Section 4. Reductions in Force

- 4.1 Following an analysis of the academic and business needs of the unit(s) or department(s) and a determination of the new organizational structure, as outlined in Section 3 above, the University shall follow the following steps to identify the positions that will be reduced eliminated by a RIF:
- a. First, the head of the affected unit or department shall conduct an analysis of the job functions that the unit or department needs going forward and the positions that will be retained and eliminated. This step is based solely on the job functions of positions and the business needs of the unit or department.
 - b. Only when there are multiple incumbents in a position that has been selected for elimination, the second step is to evaluate the skills and qualifications of the individual employees. Human Resources will assist in the review process, evaluate performance criteria, and provide seniority validations. In this multiple incumbent situation, the following factors may be considered in this assessment:
 - 1. Abilities – any special skills, qualifications, additional education, licensure, certification, etc. exhibited and/or held by the employees;

2. Performance – a comparison of performance reviews, recognized exceptional performance as documented in the employee’s personnel records, performance improvement plans, discipline, attendance, etc.; and
3. Seniority – review the length of employment at the University based on University hire date, to the extent that employees are otherwise equal in skills, qualifications, and performance.
 - (i) For staff, abilities and performance will take precedence over seniority in determining which employees are subject to the RIF.
 - (ii) For employees who have been designated as at-will, seniority is neither a factor nor a consideration in determining RIF of such positions, as such employees are considered at-will and serve at the discretion of the President.
4. Those employees who are deemed by Administration to be of key importance to a specific program or service will be retained in preference to other staff members, whatever their status.

4.2 The head of the affected unit(s) or department(s) shall determine a RIF plan, in collaboration with Human Resources, which includes the timeline of the RIF, a plan to communicate the action to the affected employees and the University at large, and the employee notification process.

4.3 Recall Procedures. An employees affected by a RIF will have the option of being reinstated into his or her former position, if the position is restored within 12 months of the date of the RIF notification. Recall will take place in reverse order of position elimination. Individuals recalled under this provision will not be required to serve the new employee probationary period. An employee who rejects an offer of recall will forfeit any remaining benefits of this Policy. An employee will not be eligible for recall if, on the RIF notification date, there is a documented performance improvement plan or disciplinary action in the previous 12-month period.

4.4 Reemployment of Affected Personnel

- a. Employees whose positions have been eliminated via a RIF may be provided a reasonable opportunity to interview for other employment at the University, if such employment is available. The University is under no obligation to create new jobs for affected employees, but affected employees may apply for posted, vacant positions through the normal recruiting and selection process.

- b. Salary offerings will remain consistent with current policies and salary schedules. No annual increment service time or other service time will be accrued during the RIF period.
- c. In order to be considered for other available employment at the University, the affected employee must meet the following criteria:
 - 1. Performance evaluations for the immediately preceding 12 months reflect at least “meets expectations” job performance;
 - 2. No documented performance improvement plan or equivalent in the preceding 12 months; and
 - 3. No documented disciplinary action or equivalent for the preceding 12 months.

4.5 Employees affected by a RIF may appeal the decision in accordance with the procedure outlined in Section 6 below.

Section 5. Layoff

5.1 In the event the President determines, based on the analysis described in Section 3 above, that a layoff is more appropriate than a RIF, the head of the unit(s) or department(s) affected by the layoff shall file a plan with Human Resources that includes

- a. A statement of the circumstances requiring the layoff;
- b. The unit(s) or department(s) in which the proposed layoff will take place;
- c. A list of the employees in each class affected by the layoff, in order of retention; and
- d. A determination of whether placement options exist within the University for the affected employees, which may include placement in a different position within the University, so long as that position is in the same pay grade and commensurate with the affected employee(s) competencies; demotion without prejudice in lieu of layoff, if any such position(s) is available and the affected employee(s) is qualified for the job; or layoff of the affected employee(s).

5.2 After the Administration has determined the number and class of positions to be reduced by the layoff, and such plan has been approved by the Board of Governors, the order of separation or reduction shall be applied in the following manner and order.

- a. Employees without permanent status in the same class or classes identified for layoff, in the following order: seasonal, exempt part-time professional, provisional, and probationary. However, an employee in the unit or department to which the layoff applies may volunteer to be separated through layoff in place of a probationary or permanent employee with less tenure.
- b. Permanent employees by job class in accordance with the plan outlined in Subsection 5.1 above. Seniority shall not be a consideration in determining which employees will be subject to the layoff, except in the event of a tie in the order of separation or reduction, in which case, seniority will be used to break the tie. If the unit or department affected by the layoff wishes to lay off a more senior employee, the unit or department must demonstrate that the more senior employee cannot perform any other job duties held by less senior employees within the unit or department or any other equivalent or lower job class for which the more senior employee is qualified.

5.3 Once approved by the President and the Board of Governors, Human Resources shall provide notice of the layoff to the affected employees in accordance with Section 3.5 above.

5.4 Recall

- a. Recall of a permanent employee separated or reduced in hours due to layoff shall be in reverse order of the layoff to the class from which the employee was laid off or any lower class in the class series or to any class previously held in the occupational group. The affected unit(s) or department(s) shall create a recall list reflecting this order.
- b. A permanent employee affected by the layoff shall remain on the recall list for the length of his or her tenure on the date of the layoff or for a period of two years, whichever is less.
- c. The University shall first consider for reemployment those former permanent employees whose names appear on the recall list for the class in which a vacancy has occurred. The University shall not make an original appointment of a new employee or reinstatement of a former permanent employee to the class until all former permanent employees on the recall list have been given first chance of refusal of the vacancy.
- d. The University shall notify any laid off permanent employee who is eligible for recall to a position under the provisions of this section of the vacancy by certified mail, return receipt requested. It is the responsibility of the affected employee to notify the University of any change in his or her mailing address.

- e. Affected employees who have been hired for permanent employment after layoff do not forfeit the remainder of the recall eligibility period and are not required to serve a probationary period.

Section 6. Appeal

- 6.1 All personnel affected by a workforce reduction have the option to appeal such decision five (5) working days of receipt of the written notification of the workforce reduction action. Within ten (10) working days of receipt of an employee's appeal, administration will review the decision and make a written determination to the employee. Use of the appeal procedure will not delay the effective date of employment termination. Any employee aggrieved by the final decision of the administration may appeal that decision to the West Virginia Public Employees Grievance Board in accordance with W. Va. Code § 6C-2-1, et seq.