

## 33.99.15 Reduction in Force for Employees Other Than Faculty

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### Regulation Statement

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This regulation establishes the procedure for any reduction in force for nonfaculty employees of The Texas A&M University System.

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### Reason for Regulation

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This regulation establishes uniform A&M System reduction-in-force procedures.

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### Procedures and Responsibilities

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#### 1. GENERAL

- 1.1 ~~The System endeavors to provide stable employment.~~ Situations including, but not limited to, a lack of funds, lack of work, reorganization, or changes in research needs or technologies, ~~however,~~ may require a reduction in the work force to ensure the continued quality and efficiency of the A&M System.
- 1.2 A reduction in force (RIF) may take the form of elimination of jobs, reduction in percent effort, or reduction in salary. Modifications in or the elimination of jobs due to changes in funding for a grant or contract, including but not limited to funds obtained from the Texas Advanced Technology or Texas Advanced Research programs, are not to be treated as reductions in force subject to this regulation.
- 1.3 The provisions of this regulation are not to be used to dismiss an employee if the sole cause for dismissal is either misconduct or lack of satisfactory performance (~~s~~See System Regulation 32.02.02, Discipline and Dismissal of Nonfaculty Employees).
- 1.4 RIF decisions will be made without regard to the employee's race, color, ~~sex~~gender, religion, national origin, age, or disability. An individual entitled to a veteran's employment preference in hiring under Texas Government Code, Chapter 657 is also

~~entitled to a preference in retaining employment if a reduction in workforce occurs. However, this preference applies only to the extent that a reduction in workforce involves other employees of a similar type or classification. See Tex. Gov't Code § 657.007. Retention preference will be given to honorably discharged veterans who served in the U. S. armed forces for at least 90 consecutive days during a declared national emergency or were discharged due to established service-connected disabilities. Retention preference will also be given to a surviving spouse who has not remarried or an orphan of a veteran as defined above who was killed while on active duty. The veteran, surviving spouse or orphan must be competent, and the preference applies only when the RIF involves other employees of a similar type or classification.~~

## 2. PROCEDURES

2.1 The A&M System ~~component~~Member Chief Executive Officer (CEO) will determine when a ~~formal~~ RIF is needed. When such a determination has been made, the following steps will be taken to implement the decision.

2.1.1 ~~Careful~~ An analysis will be performed to determine in which areas, activities, programs, or organizations reductions must be effected. If an entire activity is to be eliminated, steps described in Sections 2.1.2 and 2.1.3 below are not applicable.

2.1.2 Within the affected area, the jobs functions that will need to be performed after the reductions will be identified.

2.1.3 Present employees will be carefully evaluated as to their qualifications and ability to perform the jobs functions as determined in Section 2.1.2.

~~Additionally, evaluations may take the following into consideration:~~

- ~~(1) — ability to adjust to the necessary changes in the organization's operation and to contribute to ongoing programs;~~
- ~~(2) — effectiveness on the job, including performance and past achievement;~~
- ~~(3) — versatility (whether the individual has the ability to move into another area of operations);~~
- ~~(4) — special skills that are necessary to a particular function;~~
- ~~(5) — motivation and initiative;~~
- ~~(6) — potential; and~~
- ~~(7) — length of service with the System.~~

2.1.4 After the job functions and the individual employees have been evaluated, the determination as to which employees will be subject to the RIF will be made. The documentation used in the evaluation process, along with the

explanation, will be sent through appropriate administrative channels to the CEO or his/her designee. If the CEO or the designee concurs with the recommendation, the department head or equivalent administrative head will notify affected employee(s) of the RIF decision.

~~2.1.5 An employee designated for dismissal pursuant to this regulation must be given written notice as soon as practicable, but not less than 30 calendar days prior to dismissal. An employee with 10 or more years of continuous System service immediately preceding the RIF, however, will be notified not less than 60 days prior to dismissal.~~

2.2 A leave of absence will not be granted in lieu of dismissal.

~~2.3 For joint employees, a decision by one System component to reduce funding to a position will not obligate the other System component(s) to increase their funding to compensate for the reduction.~~

### 3. PLACEMENT EFFORTS

~~3.1 Employees designated for dismissal will be given reasonable time off to interview for other jobs prior to the date of dismissal. Every reasonable effort will be made by human resources offices to place dismissed employees in comparable positions for which they are qualified. An employee who refuses to accept a comparable job may forfeit certain rights to unemployment compensation benefits.~~

~~3.2 CEOs will give special consideration to an applicant who was dismissed from previous employment with a state agency due to a decrease in the appropriation to that agency.~~

### ~~4. RECALL~~

~~4.1 An employee who has been dismissed under the provisions of this regulation will be offered the same position if it is re-established within six months of the dismissal provided the employee has retained the ability to perform the work.~~

~~4.2 An employee who has been dismissed under the provisions of this regulation who does not respond within seven calendar days after receiving a notice regarding either a recall to work or an opportunity to interview for an open position forfeits all further recall rights. If the former employee cannot be reached by telephone, notice will be mailed to his/her last known address. The former employee has the obligation to notify the immediate supervisor and the appropriate human resources officer of any changes in address or phone number during this period.~~

### ~~45. APPEAL RIGHTS~~

An employee who receives written notice of a RIF may appeal within five (5) business days of receiving written notice of the RIF in accordance with System Regulation 32.01.02. The only grounds for appeal that will be considered are allegations that the RIF was unlawful under federal or state law.

~~5.1 Each System component will determine whether all appeals related to a RIF will be heard by an appeals panel or a senior administrator. The panel or administrator will hear individual appeals regarding the validity of evaluations or other factors bearing on an individual's dismissal or reduction in percent effort or salary due to a RIF.~~

~~5.1.1 If the System component uses an appeals panel, the CEO will appoint one or more appeals panels (as needed) of not less than three and not more than five members. Alternates may be appointed to ensure that a full panel will be available at any given call.~~

~~5.1.2 If the System component uses an administrator to hear appeals, the CEO of a university will appoint one or more vice presidents (as needed) and the CEO of an agency will appoint one or more associate or assistant directors (as needed). The administrator appointed to hear an appeal must not be responsible for the department or unit in which the RIF occurred and must not have participated in the RIF decision-making process.~~

~~5.2 Matters brought before the appeals panel or administrator will be limited to appeals by employees regarding dismissals or reductions in time or salary. A RIF decision can be appealed only on the grounds that the RIF procedures were unfairly or improperly applied. This appeal process is the exclusive internal means of appealing an action under the RIF regulation; dismissals under this regulation are not subject to arbitration or mediation.~~

~~5.3 A joint employee of more than one System component will appeal to that component designated as the employee's Administrative Location (ADLOC) for budgetary purposes.~~

~~5.4 Appeals hearings will be requested and conducted as follows:~~

~~(1) An employee will have five working days to initiate an appeal after receiving written notice of dismissal, reduction in salary, or reduction in percent effort. The request for hearing must be presented in writing to the human resources officer for the appropriate System component, specifying why the employee believes the procedures were unfairly or improperly applied. An employee who fails to meet this deadline will forfeit the right to appeal.~~

~~(2) The human resources officer will review all written requests to determine that the appeal is timely and covered by this regulation. Requests that meet the criteria will be forwarded to the appeals panel or administrator in the order of receipt.~~

~~(3) The appeals panel, if used, will meet on call as needed. The order of receipt of requests by the panel will determine the order in which appeals will be heard.~~

~~(4) The administrator, if used, may hear appeals in a meeting format or may review only written appeals, as determined by the System component. The~~

~~order of receipt of requests by the administrator will determine the order in which appeals will be handled.~~

- ~~(5) — An employee who appeals under this procedure may be represented by a person of his/her choice as long as that person is not a representative of a labor union or any other organization that claims the right to strike or bargain collectively. The System component representative also has the right to representation. If the employee is to be represented by an attorney, the employee will so notify the appropriate human resources officer at least five working days before the appeal is to be heard.~~
- ~~(6) — The appealing employee has the burden of proof to establish that the procedures were unfairly or improperly applied. If the appeals format is a hearing, the appealing employee will make the initial presentation of evidence. The appealing employee and the System component representative(s) will be allowed a reasonable time in which to present their cases, normally not to exceed one hour each. If the appeals format is a review of written material, the appealing employee and System component representative will each provide a written summary of his or her position and supporting documentation.~~
- ~~(7) — The written recommendation of the appeals panel or administrator shall be limited to determining if the procedures have been unfairly or improperly applied. The written recommendation must be presented to the employee and to the CEO within five working days of the hearing. The CEO will then inform the employee of his/her acceptance or rejection of the panel's or administrator's recommendation within seven working days of its receipt. Copies of the decision will be provided to the human resources officer and the employee's administrative unit head.~~
- ~~(8) — The entire appellate process must be completed prior to the employee's last scheduled day of work. If the process is not complete by that time, the employee will remain on the payroll until notified of the CEO's decision.~~

## 56. EFFECT OF REDUCTION IN FORCE ON BENEFITS

~~An employee who is dismissed under this regulation will have his/her sick leave balance restored if re-employed by the System or another state agency within 12 months of dismissal. Otherwise, benefits eligibility and processing procedures will be the same as those applicable to a normal termination of employment. See Chapter 31, System Policies and Regulations, *Compensation and Benefits*, as to the effect of a RIF dismissal on compensation, leave, and benefits.~~

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## Related Statutes, Policies, or Requirements

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Texas Government Code, Chapter 657

<http://tlo2.tlc.state.tx.us/statutes/docs/GV/content/pdf/gv.006.00.000657.00.pdf>

[\*Policy 32.02, Discipline and Dismissal of Employees\*](#)

<http://www.tamus.edu/offices/policy/policies/pdf/32-02.pdf>

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### **Related Statutes, Policies, or Requirements (Continued)**

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[\*Regulation 32.01.02, Complaint and Appeal Process for Nonfaculty Employees\*](#)

<http://www.tamus.edu/offices/policy/policies/pdf/32-01-02.pdf>

[\*Regulation 32.02.02, Discipline and Dismissal of Nonfaculty Employees\*](#)

<http://www.tamus.edu/offices/policy/policies/pdf/32-02-02.pdf>

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### **Contact Office**

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System Human Resources Office

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