

## Board of Governors Rule

Talent and Culture  
Reduction in Force  
Responsible Unit: Talent and Culture  
Amended: July 31, 2023  
Effective: August 21, 2023  
Revision History: Written and adopted as  
BOG Rule 3.9 on September 8, 2017  
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September 9, 2022 (effective September 30,  
2022)  
Review Date: September 2027

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### **BOG TALENT AND CULTURE RULE 3.9 REDUCTION IN FORCE**

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#### **SECTION 1: PURPOSE & SCOPE.**

- 1.1 The University seeks to provide a positive and stable work environment. However, conditions may arise that necessitate the elimination of positions held by Classified Employees, otherwise known as a Reduction in Force (RIF).
- 1.2 This Rule outlines the guiding principles for and is applicable to Reductions in Force for all Classified Employees of the West Virginia University Board of Governors, who are employed in Full-Time Regular positions.

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#### **SECTION 2: REDUCTIONS IN FORCE PROCESS AND REVIEW COMMITTEE.**

- 2.1 Reasons to implement a RIF may include, but are not limited to, budget reductions, loss of funding, reorganization, material changes to the duties or responsibilities of a position, program change/elimination, or an emergency that curtails operations.
- 2.2 The President of the University shall establish and appoint a Review Committee to review and approve any RIF Plan to implement a RIF involving more than five Full-Time Regular Classified Employees. The members of the Review Committee should include, but are not limited to, representatives from the Provost's Office, Strategic Initiatives, and Talent and Culture, with advice from the Office of General Counsel.
- 2.3 If the RIF would eliminate the positions of more than five Full-Time Regular Classified Employees, the Unit shall obtain the approval of the Review Committee prior to implementing the RIF Plan.
  - 2.3.1 If the RIF would eliminate the positions of five or fewer Full-Time Regular Classified Employees, the Unit shall obtain the approval of the Vice President for Talent and Culture prior to the implementation of the RIF Plan. The Vice

- President for Talent and Culture shall inform the Review Committee regarding any RIF.
- 2.3.2 The Vice President for Talent and Culture may, but is not required to, refer any RIF Plan to the Review Committee.
- 2.4 When a Unit becomes aware that there may be a need for a RIF, the leader of the Unit is responsible to contact and work with the Vice President for Talent and Culture and the Review Committee, as applicable, to develop a RIF Plan.
- 2.5 Prior to undertaking any RIF, a Unit shall develop a proposed RIF Plan in the form and substance required by the Vice President for Talent and Culture. The RIF Plan shall, at a minimum:
- 2.5.1 List reasonable alternative solutions (*e.g.*, where applicable, reductions of operating expenses other than payroll, moratorium on further hiring, or voluntary separation) to a RIF that were considered;
- 2.5.2 Identify the reasons for implementing the RIF;
- 2.5.3 Identify the positions recommended for elimination and the reasons for the elimination;
- 2.5.4 Describe any re-organization of the Unit or other changes that will occur as a result of the RIF;
- 2.5.5 Describe the impact of the RIF Plan to other employee types, including whether other positions will also be eliminated; and
- 2.5.6 Any other matters required by the Review Committee or the Vice President for Talent and Culture.
- 2.6 A RIF is not intended to be a performance management tool.
- 2.7 In situations where a Unit proposes to eliminate some, but not all of the positions within the same job family within the Unit, the Unit shall evaluate the skills and qualifications of the individual employees potentially subject to the RIF. The Vice President for Talent and Culture shall assist in the review process, evaluate performance criteria, and provide seniority validations. In these situations, the Unit shall give consideration to the following.
- 2.7.1 ***Performance:*** each Classified Employee's documented quality of work performance over the previous twenty-four months as demonstrated in performance evaluations of record including, but not limited to, performance evaluations and disciplinary history;

- 2.7.2 **Skills and qualifications:** specific duties and responsibilities of each position, the Classified Employee's knowledge and skills; and
- 2.7.3 **Seniority:** the length of service as defined by the rules established for the calculation of years of service outlined in BOG Talent & Culture Rule 3.7 – Annual Increment.
- 2.7.4 If all factors appear to be equal, the Unit should retain the employee or employees with more seniority.
- 2.8 If the Classified Employee did not receive a written performance evaluation for any year within the relevant time period set forth in Section 2.7.1, then for any such year that employee shall be deemed to have received a valuable performer or an equivalent rating.
- 2.9 **Commitment to Equal Opportunity and Affirmative Action.** All decisions under this Rule shall be made without regard to race, color, national origin, religion, sex, age, sexual orientation, disability, or any other class protected under state, federal, or local law, or the University's non-discrimination policy ( BOG Governance Rule 1.6 - Rule Regarding Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, Retaliation, and Relationships), unless otherwise prohibited by applicable law. The Vice President for Talent and Culture shall undertake an adverse impact analysis to determine that all RIF Plans under this Rule comply with this Section.

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### SECTION 3. RIGHTS OF CLASSIFIED EMPLOYEES.

- 3.1 The University shall provide a Classified Employee at least 60 days written notice ("Notice Period") that his or her position is going to be eliminated, unless the financial circumstances of the University are so severe that they dictate a shorter notice period, as determined by the Vice President for Talent and Culture and the Review Committee, and to the extent a shorter notice period is permissible under state and federal law.
- 3.1.1 In some situations, it is in the best interests of the Classified Employee or the department that during the Notice Period the employee receive an alternative assignment. The notice should indicate whether the employee will receive an alternative assignment or not during the Notice Period.
- 3.2 During the Notice Period, the Unit shall provide any Classified Employees subject to a position elimination reasonable time off without charge to accrued leave to attend job interviews, subject to the operational needs of the unit.
- 3.3 In accordance with W. Va. Code §6C-2-1, et seq., eligible employees may utilize the West Virginia Public Employees Grievance Procedure to seek resolution for their grievable issues involving a RIF.

**3.4 Right of Recall.**

- 3.4.1 A Unit shall not refill the specific position that has been eliminated by a RIF for a minimum of twelve calendar months, unless approved in writing by the Review Committee. If the position is refilled within twelve calendar months, the Classified Employee who was previously employed in that specific position shall be given the right of first refusal to return to the position, if the employee left in Good Standing.
- 3.4.2 Any Classified Employee impacted by a RIF is eligible for rehire if he/she exited employment in Good Standing.
- 3.4.3 A Classified Employee affected by a RIF who accepts a comparable benefits-eligible position within the University or any of its Affiliates (if the position is located in the same county in which the job was eliminated) is deemed to have waived eligibility for recall to the position from which the RIF occurred.

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**SECTION 4: SEVERANCE AGREEMENT.**

- 4.1 The University may offer a severance package to a Classified Employee who is impacted by a RIF, if financially feasible. If the University offers a severance package, the University shall provide the employee forty-five days from the date of receipt to consider the terms and conditions of the agreement and to accept the severance package. Additionally, after an employee executes a severance agreement, that employee maintains the right to revoke that execution and void the severance agreement for seven days after execution. No severance benefits shall be paid to any employee that revokes execution of the severance agreement.
- 4.2 Generally, the value of the severance package should be a minimum of four weeks of pay, but no more than the Classified Employee's annual base pay. When developing a severance package, the University may take into consideration the value of an employee's sick leave conversion benefit, if applicable. The University may also subsidize health insurance for a predetermined period of time as determined by the Review Committee. Any severance payments shall be discontinued if the individual is rehired by the University or an Affiliate prior to the end of the severance payments.
- 4.3 Any severance agreement shall contain a statement indicating that the Classified Employee releases all claims against the University, including its current and former agents, employees, servants, and representatives, including any claims that the employee could grieve pursuant to W. Va. Code §6C-2-1, et seq. and a statement of the employee's rights to benefits post-employment. Any severance agreement will not be effective, and severance pay shall not be paid, unless the employees agrees to the terms of and executes the severance agreement during the 45-day period afforded by section 4.1.

- 4.4 Nothing in this section shall prohibit a Unit from moving forward with a RIF if a Classified Employee declines to execute a severance agreement.
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**SECTION 5: EXCLUSIONS.**

- 5.1 This Rule and the rights, duties, and responsibilities contained herein are only applicable to the proposed elimination of positions that are held by a Full-Time Regular Classified Employee. Any position eliminations or reductions under the following circumstances are excluded from this Rule:
- 5.1.1 Temporary positions;
  - 5.1.2 Grant funded or contract positions hired on or after July 1, 2017;
  - 5.1.3 Any involuntary reduction in FTE or appointment length that reduces the position by twenty percent or less but does not eliminate benefits eligibility;
  - 5.1.4 Any voluntary reduction in FTE or appointment length, including a voluntary reduction that eliminates benefits eligibility;
  - 5.1.5 Any instance in which the University has contracted with an outside vendor for services and a Classified Employee is offered employment by that vendor with comparable wages; or
  - 5.1.6 Internal transfers or the employee accepting a position at an Affiliate.
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**SECTION 6: DEFINITIONS.**

- 6.1 All defined terms for this Rule are contained within the Definitions Section of Board of Governors Talent & Culture Rule 3.1 - Administration and Employment Practices, unless the text clearly indicates a different meaning.
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**SECTION 7: DELEGATION.**

- 7.1 The Board of Governors delegates to the Vice President for Talent and Culture the ability to adopt internal human resource policies and procedures in order to implement the provisions of this Rule. Any actions taken pursuant to this delegation must be consistent with the guidelines provided by this Rule.
- 7.2 To the extent federal and state law is inconsistent with this Rule and it is not possible for the University to comply with all, applicable law will govern. Accordingly, Talent and Culture,

with advice from the Office of General Counsel, has the discretion to implement any necessary changes in order to comply with legal obligations.

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**SECTION 8: AUTHORITY.**

- 8.1 W. Va. Code §6C-2-1, et seq., §18B-1-6, §18B-1-2; §18B-2A-4, §18B-7-2, §18B-7-3, §18B-9A-2 and §18B-9B-1.
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**SECTION 9: SUPERSEDING PROVISIONS.**

- 9.1 This Rule supersedes and replaces Higher Education Policy Commission (“HEPC”) Series 8 (W. Va. Code R. §§ 133-8-1 to -19), which was adopted November 22, 2001, and repealed June 22, 2018; HEPC Series 53 (W. Va. Code R. §§ 133-53-1 to -17), which was adopted May 2, 2013, and repealed March 29, 2019; HEPC Series 55 (W. Va. Code R. §§ 133-55-1 to -27, including Appendix A), which was adopted June 4, 2018, and any other current or subsequent Rule of the HEPC which relates to the subject matter contained within this Rule. This Rule also supersedes and replaces any internal University policy or procedure which relates to the subject matter contained within this Rule.