

In Brief

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EMPLOYEE DISMISSALS AND RIF LAYOFF CHECKLIST

This *In Brief* will summarize school districts' obligations under *The School Code* for non-reemployment and dismissal of non-tenured teachers and reduction-in-force ("RIF") of tenured teachers and educational support staff ("ESP").

NON-TENURED TEACHER DISMISSALS

All current non-tenured teachers are subject to a four-year "tenure track" probationary period. Any teacher who completes four (4) consecutive school terms on a full-time basis enters into contractual continued service (*i.e.*, tenure status) unless the district provides timely written notice of non-renewal or dismissal. A district may elect to not renew a non-tenured teacher's employment for any non-discriminatory reason. A district is not statutorily required to provide the non-tenured teacher with a hearing prior to discharge.

The following is a checklist for not reemploying a non-tenured teacher:

- *Identify non-tenured teachers who are not meeting the district's expectations.*
 - Carefully examine the length of time a non-tenured teacher has been **employed** with the District for purposes of determining whether the teacher is a first, second, third or fourth-year teacher, rather than the number of years the teacher has actually taught in the District.

Note: Any paid leave of absence during the full-time non-tenured teacher's first four (4)

years of employment does not constitute a break in consecutive years of service for purposes of tenure accrual. Therefore, a non-tenured teacher on a paid leave of absence will continue to accrue probationary service credit towards tenure during the leave period.

Example: In one case, a court held that a teacher's one year paid medical leave of absence during her third year of consecutive full-time probationary teaching service counted towards her accruing tenure status with the district.

- *Identify and discuss the reason(s) for not reemploying non-tenured teachers.*
 - The district is only required to provide the reasons for the dismissal to fourth-year teachers. The specific reasons for the dismissal of a fourth-year teacher should be adequately documented in the teacher's classroom observation reports and evaluations.
 - Although the district does not have to provide first, second, or third-year teachers with the specific reasons for their non-reemployment, we recommend that the district meet with the teacher and review the reasons for non-reemployment prior to issuing the notice of non-reemployment to the teacher. We also suggest that the administration document the reasons for

non-reemployment in a confidential memorandum which should be included in the teacher's personnel file. This practice will assist districts in defending any employment discrimination charges or other claims filed by non-tenured teachers challenging their non-reemployment.

Caution: We strongly discourage districts from delaying until the fourth year of employment to dismiss a non-tenured teacher who is not meeting the district's performance expectations.

There is greater potential for a fourth-year, non-tenured teacher to challenge the dismissal because the district must specify the reason(s) for dismissal. The fourth-year teacher may also contend that the reason(s) for dismissal are invalid or pretextual (*i.e.*, not the true reason for discharge), and cite favorable performance evaluations from the previous three school years as evidence that dismissal is not warranted. Moreover, the fourth-year teacher may contend that the dismissal is discriminatory and allege that the teacher's performance record and evaluations are superior to other non-tenured teachers who were reemployed or granted tenure by the district.

Accordingly, districts should carefully review the fourth-year, non-tenured teacher's classroom observation reports and summative performance evaluation to ensure that the specific reason(s) for dismissal are supported by the classroom observation reports and summative evaluation. The district should also review the teacher's summative performance evaluations for prior school years to confirm that the assessments of the teacher's weaknesses and areas for improvement in the prior evaluations are consistent with the stated reason(s) for dismissal of the fourth-year teacher.

- *The Board of Education must adopt a resolution by a majority vote authorizing the non-reemployment.*

- *Issue notice to the teacher.*
 - Notice of the Board's decision must be provided to the teacher in writing at least forty-five (45) days prior to the end of the school term. The notice of dismissal of any fourth-year, non-tenured teacher must include the specific reason(s) for the dismissal.
 - The notice must be sent to the teacher by certified mail, return receipt requested.
 - We also recommend hand delivering a copy of the notice to the teacher.

Reminder: The district's failure to provide notice of non-reemployment or dismissal in strict compliance with the statutory time deadline or other procedural requirements set forth in Section 24-11 of *The School Code* results in the automatic re-employment of the teacher under the same contract terms. If the teacher is a fourth-year teacher, the district's non-compliance with *The School Code* results in the teacher's acquisition of tenure status.

TEACHER RIF DISMISSALS

Prior to implementing a reduction-in-force ("RIF") of tenured teachers, a district must carefully review its obligations under *The School Code*, the district's collective bargaining agreement ("CBA"), and any district seniority/RIF policies. A RIF must be conducted in reverse order of seniority, unless an alternative method of RIF layoff is provided in the CBA.

If a district decides to reduce the number of teaching positions or to eliminate a particular type of service or program, we recommend that the district take the following actions:

- *Identify the program/service targeted for RIF and the number of teachers who must be RIF'ed.*
 - Review budget and financial projections.
 - Review projected student enrollments.
 - Confirm status of grant-funded programs.

- Consider the impact of staff changes (*i.e.*, resignations, retirements, transfers, reassignments, and leaves of absence).

Note: Any reduction in the extent of a full-time teacher's position, including a reduction from full-time to part-time status or a reduction in the length of an extended contract, constitutes a RIF and allows tenured teachers seniority bumping rights.

- *Identify the individual teachers who will be impacted by the RIF.*
- *Determine the seniority of the tenured teachers subject to potential RIF layoff:*
 - Determine how the district defines seniority (district-wide vs. departmental seniority, how part-time status or leaves of absence affect seniority accrual, etc.).
 - *Caution:* If a district selects an alternative method for the order of RIF pursuant to a collective bargaining agreement, the alternative sequence must be based upon objective criteria unrelated to a teacher's skills, ability, or performance.
 - Review qualifications (*i.e.*, teaching certificates, transcripts on file and subject matter qualifications) to determine whether the tenured teacher is qualified.
 - Review the district's seniority tie-breaker rules to determine whether the teacher is qualified to teach any other position within the district.
- *Consult the seniority list which must be posted by February 1 of each year.*
- *Determine "bumping" rights of tenured teachers impacted by the RIF:*
 - If a tenured teacher subject to a RIF is able to "bump" another teacher based upon his or her greater seniority, initiate the process again for the displaced teacher, until all tenured teachers have been allowed to exercise "bumping" rights.

Note: Non-tenured teachers are *not* statutorily entitled to seniority "bumping" rights in event of RIF.

- *Comply with collective bargaining obligations.*
 - If the decision to conduct the RIF is for economic reasons (*i.e.*, financial cost savings), the district is obligated to bargain the *decision* to RIF teachers.
 - If the decision to conduct the RIF is for non-economic reasons (*e.g.*, the district decides to not offer German as a foreign language due to lack of student enrollment), the district is only obligated to bargain the *impact* of the decision.
 - The district is required to initiate but *not* complete its bargaining obligations prior to complying with the statutory RIF notice requirements.
- *Schedule public hearing, if necessary.*
 - A public hearing must be held if the number of tenured teachers subject to RIF exceeds 5 or 150% of the average number of tenured teachers honorably dismissed in the preceding three years (whichever is greater).
 - When determining whether a public hearing is required, non-tenured teachers subject to RIF are *not* included in the count of tenured teachers subject to RIF layoff.

Reminder: The public hearing must be held prior to issuing the sixty (60) day dismissal notices (discussed below).
- *Issue written notice of dismissal decision.*
 - The Board must adopt a resolution by a majority vote authorizing the RIF of a teaching position.
 - The district must provide written notice of the RIF to any tenured teachers subject to the RIF at least sixty (60) days prior to the end of the school term.

Warning: The sixty (60) day notice requirement must be complied with even if the parties have not concluded RIF negotiations.

- The RIF notice must include a statement of honorable dismissal and the reasons for the RIF.
- The notice must be given to the tenured teacher by first class mail *and* either certified mail, return receipt requested or personal delivery with a receipt.
- *Recall RIF'ed teachers if positions become available.*
 - During the RIF recall period, a RIF'ed teacher is entitled to recall to any vacancy in a position the teacher is qualified to fill, not merely the position from which the teacher was RIF'ed.
 - The RIF recall period is one (1) year from the beginning of the school term following the RIF. However, if the number of tenured teachers subject to RIF exceeds 15% of the number of full-time equivalent positions held by certified employees (excluding principals and administrative personnel) in the preceding school year, the RIF'ed tenured teachers are entitled to a two (2) year recall period, rather than a one (1) year recall period.
 - A RIF'ed teacher who obtains additional qualifications during the RIF recall period (and notifies the district of the additional qualifications) is entitled to recall to any vacant positions which include the additional qualifications.

EDUCATIONAL SUPPORT STAFF RIF DISMISSALS AND REDUCTION IN HOURS

A RIF of educational support staff (“ESPs”) occurs whenever a district decides to decrease the number of ESPs employed by the school board or to discontinue a particular type of support service. A RIF also occurs when a district decides to reduce the hours of an ESP. A district is not obligated to wait until the end of a school term to conduct a RIF of ESPs.

The ESP RIF procedures are the same as the procedures for teacher RIFs, with the following exceptions:

- Notice of the Board decision to RIF an ESP must be given thirty (30) days prior to the employee’s last workday, rather than sixty (60) days before the end of the school term.
- Notice of the Board decision to reduce the work hours of an ESP must be given thirty (30) days before the employee’s hours are reduced. However, if the reduction of work hours is due to an unforeseen reduction in student population, only five (5) days notice is required.
- If the decision to RIF an ESP is due to subcontracting non-instructional services, a ninety (90) day notice must be given to the affected employees *prior* to the implementation of a decision to subcontract work to a third party.
- The RIF layoff must be targeted to the employee’s category of position, rather than overall district ESPs.
- The statutory RIF recall period is one (1) calendar year from the beginning of the school term following the RIF.
- A RIF'ed ESP has recall rights to vacancies in the specific category of position from which the employee was RIF'ed or any other category of position they are qualified to hold.
- The district is not required to conduct a public hearing prior to the RIF even if the number of ESPs subject to the RIF layoff is substantial.

Note: A RIF'ed ESP must receive all earned compensation on or before the next regular pay date following their last day of employment.

RSNLT has prepared model teacher and ESP non-reemployment and dismissal resolutions and notices. If you have any questions regarding teacher or support staff dismissals or RIFs, please contact Phil Gerner in our Chicago office.

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