

REDUCTION-IN-FORCE (RIF) Employee Questions and Answers No. 1

NOTICE: The following questions and answers are specifically intended to briefly address Reduction-In-Force (RIF) related issues which may be of concern to you and shall not constitute a contract of employment. Please refer to Executive Orders 95-01 and 03-01 or your collective bargaining agreement for details of the RIF provisions as they apply to you. The Executive Orders and the collective bargaining agreements shall take precedence over any conflicting information in the questions and answers below.

GENERAL

Q1: What is a RIF?

A1: A Reduction-in-Force (RIF) is a layoff of a permanent civil service employee whose position has been identified for abolishment due to lack of work, lack of funds, or other legitimate reasons.

Q2: How much notice is given when there is a RIF?

A2: A written 90-day notice of initial RIF is issued only to the permanent civil service employee whose position is identified for abolishment. Employees who are bumped or displaced will have a shorter notification period in accordance with their collective bargaining agreement.

Q3: Do exempt and temporary employees have RIF rights?

A3: No. Exempt and temporary employees may be laid off, but do not have RIF rights.

Q4: Can a civil service employee with RIF rights bump an exempt employee?

A4: No. A civil service employee's RIF placement is limited to only civil service positions in the same bargaining unit.

RIF PROCESS FOR PERMANENT CIVIL SERVICE EMPLOYEES

Q5: How will I know if my position is being eliminated?

A5: You will receive an official written notice of an impending RIF. The notice will include the scheduled date of the layoff, reason for the layoff, and your RIF placement rights.

Q6: What are my RIF placement rights?

A6: In addition to your written notice of the impending RIF, you are entitled to the following RIF placement rights before being terminated from service:

- A departmental job search for placement in a civil service position within your bargaining unit based on the employment conditions you are willing to accept and for which you meet all minimum qualification requirements. Searches are limited to positions in the same or lower salary range of your current position.
- If the departmental search is unsuccessful and you have at least 24 retention points, then a jurisdiction-wide search will be conducted by the Department of Human Resources Development.
- If your searches are unsuccessful, you will receive a written notice of termination. Once your employment is terminated due to RIF, you will automatically be placed on a recall list (register) administered by Department of Human Resources Development for priority re-employment referral.

Q7: What happens after I receive the official RIF notice?

A7: You must complete and submit an online RIF application and Work Force Reduction Questionnaire to the Department of Human Resources Development as stated in your notice. After the deadline, all online applications and Work Force Reduction Questionnaires will be forwarded to your Departmental Personnel Officer to begin the departmental search.

Alternatively, you may complete and submit the documents in hard copy format by the specified deadline in your RIF notice. Your RIF notice also provides information on where to obtain and submit these documents.

DEPARTMENTAL RIF SEARCH

Q8: How is the RIF search conducted?

A8: The Departmental Personnel Office will identify appropriate positions in your bargaining unit for which you meet all minimum qualification requirements, based on your responses to the placement questionnaire. First, vacant positions are identified for placement. If there are no appropriate vacant positions, the search moves on to filled positions.

Q9: Before I submit my RIF application and RIF availability forms, who can help explain the RIF process to me?

A9: Your Departmental Personnel Officer (DPO) or your union agent.

Q10: What are other requirements for my RIF placement?

A10: The requirements include meeting all minimum qualification requirements for the class of work and meeting requirements for continued public employment (e.g., background checks, citizenship and residency).

Q11: I heard that I can bump another employee with less seniority. How does this work?

A11: If you have more seniority based on retention points than a permanent civil service employee in a filled position, you may bump or displace the less senior permanent employee whose position has been identified in your RIF search in your same or related class. Relatedness for RIF bumping is determined by DHRD.

Q12: How are retention points calculated?

A12: Retention points are computed on the basis of one (1) point for each full month of continuous creditable service in the jurisdiction, i.e. Executive Branch.

Q13: What happens if there are no vacant positions and I can't bump in my department?

A13: If you have 24 or more retention points (2 years of continuous creditable service), your Departmental Personnel Office will refer you to the Department of Human Resources Development (DHRD) to conduct a jurisdiction-wide search.

Q14: What happens if I have less than 24 retention points? Will I be eligible for a jurisdiction-wide search?

A14: No. You will be given a written notice of termination.

Q15: What happens if I bump another employee? How much notice will that bumped employee get before being terminated?

A15: Unlike the permanent civil service employee whose position is being abolished and receives a 90-day notice, employees who are bumped or displaced will have a shorter notification period in accordance with their collective bargaining agreement.

JURISDICTION-WIDE RIF

Q16: How is the jurisdiction-wide search conducted?

A16: Based on your responses to the placement questionnaire, DHRD will conduct a similar search across all other Executive Branch departments and their attached agencies, including the University of Hawaii civil service. The search will exclude the Department of Education, Hawaii State Public Library System, the Hawaii Health Systems Corporation, and the Judiciary as they are separate and independent civil service systems by law. The search begins with vacant positions in your bargaining unit, followed by filled positions provided you meet all minimum qualification requirements.

Q17: What if my jurisdiction-wide search is unsuccessful?

A17: You will be given a written notice of termination.

Q18: After I am terminated, will I have re-employment rights?

A18: Yes, you will automatically be placed on a recall list for your class of work.

Q19: What is a recall list?

A19: The recall list is a list of employees who were terminated from service due to unsuccessful RIF searches. Persons on recall lists have priority referral before vacancies are filled through open competition.

UNEMPLOYMENT BENEFITS

Q20: How do I file for unemployment benefits?

A20: When you become unemployed, a claim for unemployment benefits must be filed. If you reside in Hawaii, are totally unemployed and have no other employment, you can file via the internet at www.hawaii.gov/labor/ui. Click on the "Apply Online" button to begin the claim filing process. If you cannot file via internet, you can call 643-5555 to file via Hawaii Tele-Claim. (If you are in another state, Canada, Puerto Rico, or the Virgin Islands, you can call toll-free 1-877-215-5793 to file your claim.) You can also report in person to the nearest Unemployment Insurance Office located on the island where you reside.

Do not delay filing for unemployment insurance, as your claim will start only from the week in which you file your claim.

When you file your claim, be prepared with your social security number and all employment history for the last 18 months (name of employer,

dates of employment, and reason for separation), including any part-time work.

If you have any questions, we recommend that you first go to www.hawaii.gov/labor/ui where you will find additional information including videos describing the unemployment insurance program. You can also contact your nearest local office for assistance:

Honolulu Claims Office..... 586-8970 or 586-8971
Waipahu Claims Office.....675-0030
Kaneohe Claims Office.....233-3679
Hilo Claims Office.....974-4086
Kona Claims Office.....322-4822
Maui Claims Office.....984-8400
Molokai Claims Office.....553-1750
Kauai Claims Office.....274-3043

Q21: Does waiving my displacement (bumping) rights on Form 390-R, "Workforce Reduction Placement Questionnaire," affect my unemployment benefits?

A21: No. Waiving your displacement (bumping) rights on Form 390-R does not affect your eligibility for unemployment benefits.

HEALTH INSURANCE BENEFITS

Q22: What will happen to my EUTF (Hawaii Employer-Union Health Benefits Trust Fund) health and life insurance benefits if I am laid off?

A22: Your **health benefits coverage** (medical, drug, dental, vision, chiropractic) will stop on the last day of the pay period in which your employment is terminated. So, for example, if your employment was terminated on September 25, 2009, your health benefits coverage will stop on September 30, 2009. You will be able to continue your health benefits coverage through COBRA (Consolidated Omnibus Budget Reconciliation Act).

The EUTF will mail a "COBRA Continuation Coverage Election Notice" and a "Continuation Coverage (COBRA) Election Form" directly to you with instructions and information regarding COBRA, so please be sure to notify the EUTF if you have any change in your mailing address. You will have 60 days after receiving the Notice or your termination date, whichever is later, to decide whether you want continued health coverage under COBRA or not.

If you have further questions about COBRA, you may:

- e-mail the EUTF at eutf@hawaii.gov,
- call them at 808-586-7390 or from the Neighbor Islands, 1-800-295-0089, or
- visit their website at www.eutf.hawaii.gov.

Your **life insurance coverage** will end as of the date of your termination. There is a 31-day conversion period, during which you may convert to an individual policy.

If you have further questions about converting your life insurance to an individual policy, you may call Standard Insurance Company at 1-888-408-2298.

Q23: What is COBRA?

A23: COBRA is the acronym for Consolidated Omnibus Budget Reconciliation Act of 1985, which is a federal law that requires employers subject to the Act to extend temporary health care coverage to employees and their dependents at group rates under certain instances where coverage would end. In the case of layoffs, the extension would be 18 months in duration, from the date you lost health care coverage.

Q24: How much would I have to pay for COBRA benefits?

A24: The American Recovery and Reinvestment Act of 2009 (ARRA) reduces the COBRA premium in some cases. ARRA allows those individuals who were involuntarily terminated and lost health benefits coverage between March 1, 2009 and December 31, 2009 to enroll in COBRA at a reduced premium. If your loss of health coverage was due to an involuntary termination of employment, you may be eligible for temporary premium reduction for up to nine months. Under ARRA, the laid off employee will pay 35% and the employer the remaining 65%. Please go to the EUTF website at www.eutf.hawaii.gov for detailed information.

Q25: What will happen to my Union-sponsored health and life insurance benefits if I am laid off?

A25: You will need to check with your Union Plan Administrator or union office.

EMPLOYEES' RETIREMENT SYSTEM

Q26: Am I entitled to any retirement benefits if I am laid off?

A26: See explanation below for the ERS (Employees' Retirement System) retirement plan you are in.

If you are in the Hybrid Plan: You are entitled to retirement benefits if you have at least 5 years of creditable service at the time of separation and you do not withdraw your accumulated contributions. If you have at least 20 years of service, you can apply for retirement benefits as early as age 55. If you have at least 5 but less than 20 years of creditable service at time of termination, you must wait until age 62 to receive retirement benefits.

If you are in the Noncontributory Plan: You are entitled to retirement benefits if you have at least 10 years of creditable service at the time of separation. If you have at least 20 years of service, you can apply for retirement benefits as early as age 55. If you have at least 10 but less than 20 years of creditable service, and are below age 62 when you separate, you must wait until age 65 to receive retirement benefits.

If you are in the Contributory Plan: You are entitled to retirement benefits if you have at least 5 years of creditable service at the time of separation and you do not withdraw your accumulated contributions. You can apply for retirement benefits as early as age 55 or at any age if you have at least 25 years of creditable service.

Q27: If I was in the HYBRID PLAN and had less than 5 years of service when I was laid off, will I still have my previous retirement service credits if I return to State or County* government service in the future?

A27: If you do not take a refund of your accumulated contributions and you return to State or County government service, you will not lose your credited service. You will be re-enrolled in the Hybrid Plan unless you are required to join the Contributory Plan.

If you take a refund of your accumulated contributions, all of your Hybrid credited service will be forfeited and you will not be able to buy back or “earn back” this Hybrid service. We suggest that you contact ERS before you decide to request a refund of your accumulated contributions. You will only be able to restore or “earn back” any Noncontributory service that you had at the time of your separation. Your forfeited Noncontributory service will be restored at no cost at the rate of one month for each credited month of service rendered after your return to State or County government service. You will be re-enrolled in the Hybrid Plan unless you are required to join the Contributory Plan.

(State or County government service includes service with the Executive Branch, Judiciary, University of Hawaii, Department of Education, Legislature, Hawaii Health Systems Corporation, City & County of Honolulu, Hawaii County, Maui County, Kauai County, and Office of Hawaiian Affairs.)*

Q28: If I was in the NONCONTRIBUTORY PLAN and had less than 10 years of service when I was laid off, will I have my previous retirement service credits if I return to State or County* government service in the future?

A28: If you are a Noncontributory Plan member and have less than 10 years of service, you will lose (forfeit) your credited service at the time of separation. However, if you return to State or County government service by the end of the next calendar year following the year of separation, all of your Noncontributory service credits will be restored upon your return to service. You will be enrolled in the Hybrid Plan unless you are required to join the Contributory Plan.

If you return to State or County government service after the end of the next calendar year after separation, your Noncontributory service will be restored at no cost at the rate of one month for each credited month of service rendered after your return to service. You will be enrolled in the Hybrid Plan unless you are required to join the Contributory Plan.

Q29: If I was in the CONTRIBUTORY PLAN and had less than 5 years of service when I was laid off, will I still have my previous retirement service credits if I return to State or County* government service in the future?

A29: If you do not take a refund of your accumulated contributions and you return to State or County government service within 4 calendar years following the calendar year of separation, you will not lose your credited service; however, your Contributory service credits will be converted to Noncontributory service. You will be enrolled in the Hybrid Plan unless you are required to join the Contributory Plan.

If you do not take a refund of your accumulated contributions and return to State or County government service after 4 calendar years following the calendar year of separation, your Contributory service credits will be forfeited. Your forfeited Contributory service will be restored as Noncontributory service at no cost at the rate of one month for each credited month of service rendered after your return to service. You will be enrolled in the Hybrid Plan unless you are required to join the Contributory Plan.

If you take a refund of your accumulated contributions, your Contributory service credits will be forfeited. We suggest that you contact ERS before you decide to request a refund of your accumulated contributions. If you return to State or County government service after forfeiting your Contributory service, your service will be restored as Noncontributory service at no cost at the rate one month for each credited month of service rendered after your return to service. You will be enrolled in the Hybrid Plan unless you are required to join the Contributory Plan.

Q30: If I am in the Hybrid Plan and I am laid off, can I still "upgrade" Noncontributory Plan service time towards the Hybrid Plan?

A30: Yes, you are eligible for the Hybrid Upgrade Program if you:

- Were an ERS member in service on June 30, 2006,
- Made an election to transfer to the Hybrid Plan before July 1, 2006 (or any extension due to military service outside of Hawaii),
- Had Noncontributory Plan service before July 1, 2006,
- Were an ERS member in service on December 31, 2008, and
- Comply with the Hybrid Plan Upgrade Program requirements.

If you retire before you upgrade your service, you will not be eligible for the Hybrid Upgrade Program.

DEFERRED COMPENSATION – ISLAND SAVINGS PLAN

Q31: Can I contribute part of my unused vacation pay to the Deferred Compensation Plan if I am laid off?

A31: That will depend on:

- (a) Whether you contributed your maximum already and
- (b) Whether you make arrangements with your Departmental Personnel Office and ING (formerly CitiStreet) to participate in the Vacation Pay Deferral Program. See your Departmental Personnel Officer for instructions, schedule of deadlines and forms.

Q32: How soon can I begin withdrawing my Deferred Compensation benefits if I am laid off?

A32: If you want a lump sum or partial distribution/withdrawal, you may start after ING receives your termination status from your department and the termination notification has been updated on your Plan account. The termination date will be updated in your account by ING **after** the separation date. If you want any type of systematic installment payout, this distribution will start the month after your termination notification has been updated on your Plan account. However, if you are participating in the Post Separation Vacation Pay Program you may take out a partial lump sum, however, you must make arrangements with your Departmental Personnel Office and ING.

Q33: What withdrawal options are available?

A33:

1. Lump sum or partial lump sum
2. Systematic monthly, quarterly, semi-annual, or annual payments (e.g., \$100 per month)
3. Duration installment payment (e.g., \$1,000 per year for the next 10 years)
4. Direct Rollovers

Q34: How long can the withdrawal of benefits be postponed?

A34: You are not required to take a distribution until the later of: (a) the year you reach age 70-1/2; or (b) the year in which you retire.

Q35: If I am in the Hybrid Plan and I am laid off, can I use a portion of my Deferred Compensation Plan account to "upgrade" Noncontributory Plan service time towards the Hybrid Plan?

A35: Yes, provided you qualify. Please refer to the eligibility requirements for the Hybrid Upgrade Program contained in response A30.

Q36: Who do I call if I need help or have other questions on the Deferred Compensation/Island Savings Plan?

A36: Call the Island Savings Plan Customer Service Line at 1-888-71A-LOHA (1-888-712-5642), and press option #2 for the Local Office.

HELPFUL TAX INFORMATION

Q37: Are unemployment benefits subject to federal and Hawaii income tax?

A37: The American Recovery and Reinvestment Act of 2009 (the "Recovery Act") enacted by Congress and signed into law by President Obama on February 17, 2009, excludes up to \$2,400 in unemployment compensation from a recipient's gross income for federal income tax purposes for taxable years beginning in 2009 only. Unemployment compensation received in excess of \$2,400 is subject to federal income tax. Refer to the website for the Department of Labor and Industrial Relations, available at <http://www.hawaii.gov/labor>, for additional information on unemployment compensation.

Q38: Is the COBRA premium subsidy subject to federal and Hawaii income tax?

A38: Under the Recovery Act the federal government subsidizes 65% of COBRA premiums¹ for eligible individuals (i.e., generally, individuals involuntarily terminated at any time from employment from September 1, 2008 through December 31, 2009, who qualify for and elect to receive COBRA continuation coverage) for a period of up to nine months. The

¹ COBRA continuation coverage is a temporary extension of health insurance coverage under a former employer's group health plan. Refer to the Employer-Union Health Benefits Trust Fund website, available at <http://www.eutf.hawaii.gov>, for more information on COBRA continuation coverage for former State of Hawaii employees.

COBRA premium subsidy is expressly excluded from the recipient's gross income for federal income tax purposes.

If the 2010 Hawaii legislature conforms to the above exclusion provision of the Recovery Act, then the COBRA premium subsidy will not be subject to Hawaii income taxes.

Q39: Are withdrawals from the State of Hawaii Island Savings Plan (the "Plan") taxable?

A39: If, upon termination of employment, a participant in the Plan opts to withdraw any funds from the Plan without rolling the funds over to an eligible retirement plan within a specified time period, the withdrawn funds will be included in the participant's gross income and subject to income tax in the year paid to the participant.

A terminated employee may also opt to transfer balances in the Plan to another qualified plan or account (e.g., traditional IRAs, 403(b) annuities) to defer federal and Hawaii income taxes. The transfers may be accomplished by direct trustee-to-trustee transfers or rollovers. Refer to the Island Savings Plan website, available at <http://islandsavings.ingplans.com>, for further information.

Q40: Are contributions of unused vacation pay to the Plan taxable?

A40: Participants in the Plan who also participate in the Vacation Pay Deferral Program may be eligible to contribute unused vacation pay to the Plan. The value of such contributions would be treated the same as other deferred compensation under the Plan and only be subject to federal and Hawaii income tax in the year the compensation is paid or otherwise made available to the participant or beneficiary.

Q41: Are in-service withdrawals from the Plan taxable?

A41: Under the Plan, participants who are still employed by the State may withdraw funds from the Plan due to an unforeseeable emergency (i.e., sudden and unexpected illness or accident, loss of property due to casualty or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the participant's control) in the amount reasonably necessary to cover the emergency need. Generally, a distribution due to an unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the Plan.

In-service withdrawals are included in the participant's gross income and subject to federal and Hawaii income tax in the year paid to the participant. Refer to the Island Savings Plan website, available at <http://islandsavings.ingplans.com> for more information.

Q42: Are refunds of accumulated contributions under either the Hybrid Plan or the Contributory Plan taxable?

A42: Federal income taxes are due on the taxable portion of a refund payment. If a participant is below age 55 (age 50 for emergency medical technicians), an additional 10% tax on the taxable portion of the refund must be paid to the Internal Revenue Service. However, participants can defer these taxes by rolling over the taxable portion of the refund into an IRA.

Refunds of contributions from either the Hybrid Plan or the Contributory Plan are not subject to Hawaii income tax. Refer to the Employees' Retirement System website, available at <http://www4.hawaii.gov/ers>, for further information.

Q43: Are withdrawals from traditional individual retirement accounts (IRAs) taxable?

A43: A taxpayer may withdraw funds from a traditional IRA without being subject to the 10% early distribution penalty,² if the taxpayer reaches 59-1/2 years of age, is disabled (as defined by the Internal Revenue Service), or in the case of annuitized payments, certain medical-related distributions (such as health insurance purchased if the IRA owner becomes unemployed), higher education expenses, certain first-time homebuyer expenses, and IRS levies. Amounts distributed from traditional IRAs are included in gross income and subject to federal and Hawaii tax. The income tax is in addition to the 10% early distribution penalty, if applicable. Any portion of an IRA distribution that is attributable to an employer-funded pension or retirement plan is not subject to Hawaii income tax.

Please consult a tax advisor before withdrawing from an IRA.

Q44: Are withdrawals from a Roth IRA taxable?

A44: Qualified distributions from a Roth IRA are not subject to federal or Hawaii income taxes. Qualified distributions are distributions made after the five-year tax period beginning with the first tax year for which the taxpayer (or the taxpayer's spouse) made a contribution to a Roth IRA established for the taxpayer and that are made (1) on or after the taxpayer reaches 59-1/2

² The 10% early distribution penalty is imposed at the federal level only. Hawaii does not impose a penalty for early distributions from IRAs.

years of age; (2) at or after the taxpayer's death; (3) on account of the taxpayer's disability; or (4) for a qualified first-time home purchase. Nonqualified distributions from a Roth IRA are not taxable for federal and Hawaii income tax purposes to the extent such distribution, when added to all previous distributions from the Roth IRA, does not exceed the aggregate contributions to the Roth IRA (i.e., nonqualified distributions of earnings from a Roth IRA are subject to federal and Hawaii income tax). A 10% early distribution penalty³ also applies to that portion of a nonqualified distribution that is subject to tax.

Please consult a tax advisor before withdrawing from an IRA.

Q45: Is there any income realized from the forgiveness of debt?

A45: Generally, a taxpayer realizes income from the forgiveness of a debt. However, in certain instances, an exclusion applies to exclude any gross income from the forgiveness of indebtedness from tax if: (1) the forgiveness occurs in bankruptcy under title 11 of the United States Code; (2) the forgiveness occurs when the taxpayer is insolvent; (3) the indebtedness forgiven is qualified farm indebtedness; (4) in the case of taxpayer other than a C corporation, the indebtedness forgiven is qualified real property business indebtedness; or (5) the indebtedness forgiven is qualified principal residence indebtedness which is forgiven before January 1, 2013.

Tax attributes are reduced by the amount of forgiven debt that is excluded from gross income. For instance, the amount of forgiven qualified principal residence indebtedness that is excluded from gross income reduces the taxpayer's basis in the principal residence, affecting, for example, the gain realized upon disposition of the principal residence. Please consult a tax advisor for the proper tax treatment of forgiven debt.

Q46: If annual income is expected to be lower, can income taxes withheld be adjusted?

A46: Yes, if a taxpayer (and/or taxpayer's spouse, for a joint return) expects to earn less income in a given tax year, the taxpayer should analyze income taxes withheld from each pay check to determine whether the amounts withheld should be decreased. State employees may consult their Personnel Office to change their withholdings by submitting a new W-4/HW-4.

³ The 10% early distribution penalty is imposed at the federal level only. Hawaii does not impose a penalty for early distributions from IRAs.