

1981 WL 157786 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 18, 1981

*1 Dr. Jack Mullins
Director
State Personnel Division
Edgar A. Brown Building
Columbia, South Carolina

Dear Dr. Mullins:

This will summarize and confirm our opinions expressed to you at recent conferences concerning the rights and status of State employees affected by reduction in force (RIF) actions.

1. Do CETA 'participants' (on the job trainees) have re-employment and 'bumping' rights as do regular employees?

No. CETA 'participants', as distinguished from regular CETA-funded staff employees, are in a trainee status and have no further rights than any other temporary or trainee employees. They do not have rights to re-employment following a RIF, and have no 'bumping' rights to available positions vis-a-vis any regular employee, even though the individual CETA 'participant' may have actually been employed for a longer time than a regular employee in the same position classification. The fact that the regular employee's salary may be funded in whole or in part from CETA or other federal grants is not controlling, as noted in this Office's opinion of March 19, 1981.

2. Does an employee who resigns or accepts another position (including transfer, demotion or promotion) before the effective date of the RIF retain grievance rights?

Yes. Even though an employee resigns, or accepts other or lesser position in the agency this is held generally to be in response to his legal obligation to 'mitigate' or lessen the damages to him from (alleged) [wrongful discharge](#). See generally, [annotation at 44 ALR 3d 629](#); [Parker v. Twentieth Century Fox](#), 3 Cal. 3rd 176, 474 P.2d 737.

3. Does an employee affected by a RIF have the right to grievance on the ground that the RIF should not have been implemented?

No. Although 'layoff' is subject to grievance under Section 8-17-20, 1976 Code, as amended (the State Employee Grievance Procedure Act), such grievance properly lies only against the application of the RIF to the individual concerned. The management decision of the agency to implement a RIF plan is not subject to objection by grievance procedure.

4. Does the signing by an employee of a Federal Position Agreement Form affect his grievance rights on implementation of a RIF plan?

No. See opinion of this Office dated March 19, 1981.

Sincerely,

Frank K. Sloan
Deputy Attorney General

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