



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

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SEP 27 2016

MANPOWER AND
RESERVE AFFAIRS

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY, CIVILIAN PERSONNEL
(MANPOWER AND RESERVE AFFAIRS) (DEPARTMENT OF
ARMY)
DEPUTY ASSISTANT SECRETARY, CIVILIAN HUMAN
RESOURCES (DEPARTMENT OF THE NAVY)
ASSISTANT DEPUTY CHIEF OF STAFF (MANPOWER,
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(WASHINGTON HEADQUARTERS SERVICES)
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(DEFENSE LOGISTICS AGENCY)
DIRECTOR FOR HUMAN RESOURCES
(DEFENSE FINANCE AND ACCOUNTING SERVICE)

SUBJECT: Probationary Period for New Employees

The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 amended title 10, United States Code (U.S.C.), by adding section 1599e (attached). This new section requires that the appointment of "covered employees" within the Department of Defense (DoD) shall become final only after the employee has served a probationary period of two years. Covered employees include individuals who are appointed to permanent positions in the competitive service and individuals who received career appointments in the Senior Executive Service (SES) within DoD on or after November 26, 2015. This change does not apply to individuals appointed prior to that date.

The NDAA for FY 2016 also allows the Secretaries of Defense and the Military Departments to exercise their discretion to extend a covered employee's probationary period past the new two year requirement. Departmental policy for this provision is currently under development.

Notwithstanding the change in the length of probationary service as specified above, there are no changes in determining when a probationary period is required. Employees who have completed a probationary period under an initial appointment in the competitive service, having attained full appeal rights to the Merit Systems Protection Board, do not have to serve another or extended probationary period under this authority. There are no changes for crediting prior Federal civilian service toward completion of a probationary period for competitive service employees, as outlined in 5 C.F.R. §315.802(b) and 5 C.F.R. §317.503(d)(4) for members of the SES. There is also no change in crediting periods of absence under 5 C.F.R. §§315.802(c) and 317.503(d)(1)-(3).

Please ensure that new appointees and their supervisors are aware of the length of the probationary period, and that vacancy announcements are properly notated. Notifications of Personnel Actions (SF-50) for new appointees should likewise be properly notated (this may occur manually pending updates to the Defense Civilian Personnel Data System).

My point of contact is Ms. Megan Maciejewski, Defense Civilian Personnel Advisory Service, Staffing Policy Division, who may be reached at (571) 372-1538, or via email at megan.e.maciejewski.civ@mail.mil.



Julie Blanks

Acting Deputy Assistant Secretary of Defense
Civilian Personnel Policy

Attachment:
As stated

SEC. 1105. REQUIRED PROBATIONARY PERIOD FOR NEW EMPLOYEES OF THE DEPARTMENT OF DEFENSE.

(a) REQUIRED PROBATIONARY PERIOD.—

(1) IN GENERAL.—Chapter 81 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 1599e. Probationary period for employees

“(a) IN GENERAL.—Notwithstanding sections 3321 and 3393(d) of title 5, the appointment of a covered employee shall become final only after such employee has served a probationary period of two years. The Secretary concerned may extend a probationary period under this subsection at the discretion of such Secretary.

“(b) DEFINITIONS.—In this section:

“(1) The term ‘covered employee’ means any individual—

“(A) appointed to a permanent position within the competitive service at the Department of Defense; or

“(B) appointed as a career appointee (as that term is defined in section 3132(a)(4) of title 5) within the Senior Executive Service at the Department.

“(2) The term ‘Secretary concerned’ includes the Secretary of Defense with respect to employees of the Department of Defense who are not employees of a military department.

“(c) EMPLOYMENT BECOMES FINAL.—Upon the expiration of a covered employee’s probationary period under subsection (a), the supervisor of the employee shall determine whether the appointment becomes final based on regulations prescribed for such purpose by the Secretary of Defense.

“(d) APPLICATION OF CHAPTER 75 OF TITLE 5 FOR EMPLOYEES IN THE COMPETITIVE SERVICE.—With respect to any individual described in subsection (b)(1)(A) and to whom this section applies, section 7501(1) and section 7511(a)(1)(A)(ii) of title 5 shall be applied to such individual by substituting ‘completed 2 years’ for ‘completed 1 year’ in each instance it appears.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 81 of such title is amended by adding at the end the following new item:

“1599e. Probationary period for employees.”.

(b) APPLICATION.—The amendment made by subsection (a) shall apply to any covered employee (as that term is defined in section 1599e of title 10, United States Code, as added by such subsection) appointed after the date of the enactment of this section.

(c) CONFORMING AMENDMENTS.—Title 5, United States Code, is amended—

(1) in section 3321(c), by inserting at the end before the period the following: “, or any individual covered by section 1599e of title 10”;

(2) in section 3393(d), by adding at the end the following:

“The preceding sentence shall not apply to any individual covered by section 1599e of title 10.”;

(3) in section 7501(1), by striking “or who” and inserting “or, except as provided in section 1599e of title 10, who”;

(4) in section 7511(a)(1)(A)(ii), by inserting “except as provided in section 1599e of title 10,” before “who”; and

(5) in section 7541(1)(A), by inserting “or section 1599e of title 10” after “this title”.