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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

RIN 3206-AG77

Reduction in Force Retreat Right

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim retention regulations that clarify existing policy on employees' "Retreat" rights. These interim regulations also clarify existing policy concerning the content of specific written reduction in force notices, and issuance of a Certification of Separation.

DATES: These interim regulations are effective August 25, 1995. Written comments will be considered if received no later than October 24, 1995.

ADDRESSES: Send written comments to Leonard R. Klein, Associate Director for Employment Service, Office of Personnel Management, Room 6F08, 1900 E Street, NW, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon or Edward P. McHugh, 202-606-0960, FAX 202-606-2329.

SUPPLEMENTARY INFORMATION:

Assignments Rights—General

Reduction in force assignment rights are covered in subpart 351-G of title 5, Code of Federal Regulations. A competing employee in retention tenure Groups I and II with current performance ratings of at least "Minimally Successful" who has been released from a competitive level is entitled to an offer of assignment under the "retention regulations if the employee has "Bumping" or

"Retreating" rights to an available position in the same competitive area. The available position must be within three grades or grade-intervals (or equivalent) of the employee's present position. However, an employee who is eligible for veterans' preference under the retention regulations, and who has a service-connected disability of 30 percent or more, has a retreat right to positions up to five grades or grade-intervals (or equivalent) of the employee's present position.

Assignment Rights—Bumping

5 CFR 351.701(b) covers employee "Bump" rights. "Bumping" means displacing an employee in a lower tenure group, or in a lower subgroup within the released employee's own tenure group. Although the released employee must be qualified for the position, it may be a position that the employee has never held.

Assignment Rights—Retreating

5 CFR 351.701 (c) and (d) cover "Retreat" rights. "Retreating" means displacing an employee with less service within the released employees own tenure group and subgroup (i.e., a limited form of bumping within the same retention group and subgroup). 5 CFR 351.701(c)(3) provides that the position must also be the same position or essentially identical to a position held by the released employee in a Federal agency.

An employee with a current annual performance rating of "Minimally Successful" has retreat rights only to a position held by an employee with the same or a lower rating.

5 CFR 351.701(c)(3) is revised to provide that, for purposes of determining an employee's retreat rights, a position is considered essentially identical to one previously held (1) if the employee held the previous position on a permanent basis, and (2) the agency determines on the basis of available information that the two positions are otherwise interchangeable under the competitive level criteria found in section 5 CFR 351.403, but without regard to the respective grade, classification series, type of work schedule, or type of service, of the two positions. In short, an employee has the right to retreat if the employee's former position and a position held by a lower-standing employee are interchangeable under the

competitive level standard found in 5 CFR 351.403 on the basis of the duties, responsibilities, and qualification, even if the two positions differ in regard to grade, classification series, type of work schedule, or type of service.

Examples

Example number 1: A GS-7 employee formerly held a GS-322-5 position. Because of a new classification standard, the GS-322-5 is reclassified to a GS-326-5 with no change in duties, responsibilities, and qualifications. This regulation clarifies that the GS-7 employee would have a right to retreat to the GS-326-5 position held by a lower-standing employee if the agency determines that the employee's former GS-322-5 position and the GS-326-5 position are otherwise essentially identical using the competitive level test found in 5 CFR 351.403.

Example number 2: A WG-4204-10 employee formerly held a WG-4204-7 position. Because of classification error, the WG-4204-7 position is reclassified to a WG-4204-8 with no change in duties, responsibilities, and qualifications. This regulation clarifies that the WG-4204-10 employee would have a right to retreat to the WG-4204-8 position held by a lower-standing employee if the agency determines that the employee's former WG-4204-7 position and the WG-4204-8 position are otherwise essentially identical using the competitive level test found in 5 CFR 351.403.

Example number 3: A full-time GS-343-11 employee formerly held a part-time GS-343-7 position. This regulation clarifies that the full-time GS-343-11 employee would have a right to retreat to a full-time GS-343-7 held by a lower-standing employee if the agency determines that the employee's former part-time GS-343-7 position and the GS-343-7 position are otherwise essentially identical using the competitive level test found in 5 CFR 351.403.

Example number 4: A GS-334-11 competitive service employee formerly held a GS-334-7 position under an excepted service Veterans Readjustment Appointment (VRA). This regulation clarifies that the GS-343-11 employee would have a right to retreat to a GS-343-7 position held by a lower-standing competitive service employee if the agency determines that the employee's former GS-334-7 VRA position and the

GS-334-7 position are otherwise essentially identical using the competitive level test found in 5 CFR 351.403.

Reduction in Force Notices

5 U.S.C. 3502(d)(1) provides that an agency must give each employee a minimum of 60 days specific written notice before effecting a reduction in force action. Pub. L. 102-484 provided that each employee of the Department of Defense is entitled to a minimum of 120 days specific written notice when a significant number of employees will be separated during the period from January 20, 1993, through January 31, 1998.

Section 911(a) of Pub. L. 103-337 extended the window period for the 120 days specific written notice applicable to the Department of Defense to cover the period from January 20, 1993, through January 31, 2000. 5 CFR 351.801(a)(2) is revised to include this statutory change.

5 U.S.C. 3502(d)(2)(A) provides that an agency must cover in a specific reduction in force notice the personnel action that is being taken. 5 CFR 351.802(a)(1) is revised to provide that a specific reduction in force notice must cover the action to be taken, the effective date of the action, and the reasons for the action.

Certification of Expected Separation

5 CFR 351.807 provides that an agency may issue a Certification of Expected Separation to employees likely to be separated by reduction in force within 6 months. 5 CFR 351.807(b) covers the conditions under which an agency may issue a Certification. In final regulations published on January 11, 1995, at 60 FR 2677, the word "or" inadvertently followed 5 CFR 351.807(b)(3) rather than the word "and," which was used in interim regulations published on June 27, 1994, at 59 FR 32873. 5 CFR 351.807 is revised to provide that "and" again follows 5 CFR 351.807(b)(3), consistent with the interim regulations.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because it would be contrary to the public interest to delay access to benefits. Also, pursuant to 5 U.S.C. 553(d)(3), I find that food cause exists to make this amendment effective in less than 30 days. The delay in the effective date is being waived to clarify OPM's retention regulations as agencies undertake potential downsizing actions

and to give effect to the benefits extended by the amended provisions at the earliest practicable date.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects in 5 CFR Part 351

Administrative practice and procedure, Government employees. U.S. Office of Personnel Management.

James B. King,
Director.

Accordingly, OPM is amending 5 CFR part 351 as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503, Section 351.801 also issued under E.O. 12828, 58 FR 2965.

2. In § 351.701, paragraph (c)(3) is revised to read as follows:

§ 351.701 Assignment involving displacement.

* * * * *

(c) * * *
(3) Is the same position, or an essentially identical position, held by the released employee on a permanent basis in a Federal agency. (In determining whether a position is essentially identical, the determination is based on the competitive level criteria found in 5 CFR 351.403, but not necessarily in regard to the respective grade, classification series, type of work schedule, or type of service, of the two positions.)

* * * * *

3. In § 351.801, paragraph (a)(2) is revised to read as follows:

§ 351.801 Notice period.

(a) * * *

(2) Under authority of section 4433 of Pub. L. 102-484, as amended by section 911(a) of Pub. L. 103-337, each competing employee of the Department of Defense is entitled, under implementing regulations issued by that agency to a specific written notice at least 120 full days before the effective date of release when a significant number of employees will be separated by reduction in force. The 120 days notice requirement is applicable during the period from January 20, 1993, through January 31, 2000. The basic requirement for 60 full days specific written notice set forth in paragraph (a)

of this section is still applicable when less than a significant number of employees will be separated by reduction in force.

* * * * *

4. In § 351.802, paragraph (a)(1) is revised to read as follows:

§ 351.802 Content of notice.

(a)(1) The action to be taken, the reasons for the action, and its effective date;

* * * * *

5. In § 351.807, paragraph (b)(3) is revised to read as follows:

§ 351.807 Certification of expected separation.

* * * * *

(b) * * *

(3) Placement opportunities within the employee's own or other Federal agencies in the local commuting area are limited or nonexistent; and

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[FR Doc. 95-21019 Filed 8-24-95; 8:45 am]
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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Notice of Practice and Procedure; Realignment of Regional Offices

AGENCY: Merit Systems Protection Board.

ACTION: Final rule; Correction.

SUMMARY: The document on Practice and Procedure; Realignment of Regional Offices which was published on August 10, 1995 (60 FR 40744), contained an error in the address for the Atlanta Regional Office. This document contains the correct address and facsimile number for the Atlanta Regional Office and amends the Approved Hearing Locations by Regional Appeals for the Atlanta Regional Office.

EFFECTIVE DATE: August 25, 1995.

FOR FURTHER INFORMATION CONTACT: Darrell L. Netherton, Senior Executive for Regional Administration, (202) 653-7980.

SUPPLEMENTARY INFORMATION: In FR Doc. 95-19729, on page 40744, Column 3, in Appendix II to part 1201, item 1 is corrected to read as follows:

Atlanta Regional Office, 401 West Peachtree Street NW., 10th floor, Atlanta, Georgia 30308-3519, Facsimile No.: (404) 730-2767 (Alabama, Florida, Georgia, Mississippi, South Carolina, and Tennessee)