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Subpart C—Principal Statutory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

§ 752.301 Principal statutory requirements.

This subpart incorporates the principal statutory requirements in subchapter II of chapter 75 of title 5, United States Code, for removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less.

CHAPTER 75—ADVERSE ACTIONS

SUBCHAPTER II—REMOVAL SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

§ 7511. Definitions; application

(a) For the purpose of this subchapter—
(1) ''employee'' means—
(A) An individual in the competitive service—
(i) who is not serving a probationary or trial period under an initial appointment; or
(ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;
(B) a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions—
(i) in an executive agency; or
(ii) in the United States Postal Service or Postal Rate Commission; and
(C) an individual in the excepted service other than a preference eligible—
(i) who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; or
(ii) who has completed 2 years of current continuous service in the same or similar positions in an executive agency under other than a temporary appointment limited to 2 years or less;
(2) ''suspension'' has the meaning as set forth in section 7501(2) of this title;
(3) ''grade'' means a level of classification under a position classification system;
(4) ''pay'' means the rate of basic pay fixed by law or administrative action for the position held by an employee; and
(5) ''furlough'' means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.
(b) This subchapter does not apply to an employee—
(1) whose appointment is made by and with the advice and consent of the Senate;
(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—
(A) the President for a position that the President has excepted from the competitive service;
(B) the Office of Personnel Management for a position that the Office has excepted from the competitive service; or
(C) the President or the head of an agency for a position excepted from the competitive service by statute;
(3) whose appointment is made by the President;
(4) who is receiving an annuity from the Civil Service Retirement and Disability Fund, or the Foreign Service Retirement and Disability Fund, based on the service of such employee;
(5) who is described in section 8337(h)(1), relating to technicians in the National Guard;
(6) who is a member of the Foreign Service, as described in section 103 of the Foreign Service Act of 1980;
(7) Whose position is within the Central Intelligence Agency or the General Accounting Office;
(8) Whose position is within the United States Postal Service, the Postal Rate Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the Defense Intelligence, Agency, or an intelligence activity of a military department covered under section 1590 of title 10, unless subsection (a)(1)(B) of this section or section 1005(a) of title 39 is the basis for this subchapter's applicability;
(9) Who is described in section 5102(c)(11) of this title; or
(10) Who holds a position with the Veterans Health Administration which has been excluded from the competitive service by or under a provision of title 38, unless such employee was appointed to such position under section 7401(3) of such title.
(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulations of the Office which is not otherwise covered by this subchapter.

§ 7512. Actions covered

This Subchapter applies to—
(1) a removal;
(2) a suspension for more than 14 days;
(3) a reduction in grade;
(4) a reduction in pay; and
(5) a furlough of 30 days or less;
but does not apply to—
(A) a suspension or removal under section 7532 of this title,

(B) a reduction-in-force action under section 3502 of this title,

(C) the reducation in grade of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title if such reduction is to the grade held immediately before becoming such a supervisor or manager,

(D) a reduction in grade or removal under section 4303 of this title, or

(E) an action initiated under section 1206 or 7521 of this title.

§ 7513. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

(b) An employee against whom an action is proposed is entitled to—

(1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative, and

(4) a written decision and the specific reasons therefore at the earliest practicable date.

(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and an order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Board upon its request and to the employee affected upon the employee's request.

§ 7514. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter, except as it concerns any matter with respect to which the Merit Systems Protection Board may prescribe regulations.

[45 FR 46778, July 11, 1980, as amended at 57 FR 20043, May 11, 1992; 58 FR 13192, Mar. 10, 1993]

Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

§ 752.401 Coverage.

(a) *Adverse actions covered.* This subpart applies to the following actions:

(1) Removals;

(2) Suspensions for more than 14 days, including indefinite suspensions;

(3) Reductions in grade;

(4) Reductions in pay; and

(5) Furloughs of 30 days or less.

(b) *Actions excluded.* This subpart does not apply to:

(1) An action imposed by the Merit Systems Protection Board under the authority of 5 U.S.C. 1206;

(2) The reduction in grade of a supervisor or manager who has not completed the probatinary period under 5 U.S.C. 3321(a)(2) if such a reduction is to the grade held immediately before becoming a supervisor or manager;

(3) A reduction-in-force action under 5 U.S.C. 3502;

(4) A reduction in grade or removal under 5 U.S.C. 4303;

(5) An action against an administrative law judge under 5 U.S.C. 7521;

(6) A suspension or removal under 5 U.S.C. 7532;

(7) Actions taken under provision of statute, other than one codified in title 5, United States Code, which excepts the action from subchapter II of chapter 75 of title 5, United States Code;

(8) Action that entitles an employee to grade retention under part 536 of this chapter, and an action to terminate this entitlement;

(9) A voluntary action by the employee;

(10) Action taken or directed by the Office of Personnel Management under part 731 or part 754 of this chapter;

(11) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;

(12) Action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the agency informed the