

§ 339.305

5 CFR Ch. I (1–1–20 Edition)

render a final medical determination. In certain final medical ineligibility determinations, the agency physician or medical review officer may reference supplemental medical examination, testing or documentation, which the applicant or employee may submit to the agency for consideration and further review relative to potential medical eligibility. Under these circumstances, the applicant or employee is responsible for payment of this further examination, testing and documentation.

(c) An applicant or employee must pay to obtain all relevant medical documentation from his or her private licensed physician or required practitioners in instances where no medical examination is required or offered by the agency, but where the agency requests the applicant or employee to provide medical documentation relative to an identified medical or physical condition in question or where the agency needs medical documentation to render an informed management decision.

(d) An applicant or employee must pay for a medical examination conducted by his or her private licensed physician or practitioner where the purpose of the examination is to secure a change sought by an applicant (e.g., new employment) or by an employee (e.g., a request for change in duty status, reasonable accommodation, and/or job modification).

§ 339.305 Records and reports.

(a) Agencies will receive and maintain all medical documentation and records of examinations obtained under this part in accordance with part 293, subpart E, of this chapter.

(b) The report of an examination conducted under this subpart must be made available to the applicant or employee under the provisions of part 297 of this chapter.

(c) Agencies must forward to the Office of Workers' Compensation Programs (OWCP), Employment Standards Administration, Department of Labor, a copy of all medical documentation and reports of examinations of employees who are receiving or have applied for injury compensation benefits under 5 U.S.C. chapter 81, including continu-

ation of pay. The agency must also report to OWCP the failure of such employees to report for examinations that the agency orders under this subpart. When the employee has applied for disability retirement, this information and any medical documentation or reports of examination must be forwarded to OPM.

§ 339.306 Processing medical eligibility determinations.

(a) In accordance with the provisions of this part, agencies are authorized to medically disqualify a nonpreference eligible. A nonpreference eligible so disqualified has a right to a higher level review of the determination within the agency.

(b) OPM must approve the sufficiency of the agency's reasons to:

(1) Medically disqualify or pass over a preference eligible in order to select a nonpreference eligible for:

(i) A competitive service position under part 332 of this chapter; or

(ii) An excepted service position in the executive branch subject to title 5, U.S. Code;

(2) Medically disqualify or pass over a 30 percent or more compensably disabled veteran for a position in the U.S. Postal Service in favor of a nonpreference eligible;

(3) Medically disqualify a 30 percent or more compensably disabled veteran for assignment to another position in a reduction in force under § 351.702(d) of this chapter; or

(4) Medically disqualify a 30 percent or more disabled veteran for noncompetitive appointment, for example, under § 316.302(b)(4) of this chapter.

PART 340—OTHER THAN FULL-TIME CAREER EMPLOYMENT (PART-TIME, SEASONAL, ON-CALL, AND INTERMITTENT)

Subpart A—Principal Statutory Requirements—Part-Time Employment

Sec.
340.101 Principal statutory requirements.

Subpart B—Regulatory Requirements—Part-Time Employment

340.201 Regulatory requirements.
340.202 General.

Office of Personnel Management

§ 340.101

340.203 Technical assistance.
340.204 Agency reporting.

Subpart C [Reserved]

Subpart D—Seasonal and Intermittent Employment

340.401 Definitions.
340.402 Seasonal employment.
340.403 Intermittent employment.

AUTHORITY: 5 U.S.C. 3401 *et seq.*, unless otherwise noted.

SOURCE: 44 FR 57380, Oct. 5, 1979, unless otherwise noted.

Subpart A—Principal Statutory Requirements—Part-Time Employment

§ 340.101 Principal statutory requirements.

This subpart incorporates for the benefit of the user of the principal statutory requirements governing part-time career employment, as contained in 5 U.S.C. 3401–3408, and related provisions of Public Law 95–437.

SHORT TITLE

SEC. 1. This Act may be cited as the “Federal Employees Part-Time Career Employment Act of 1978”.

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) many individuals in our society possess great productive potential which goes unused because they cannot meet the requirements of a standard workweek; and

(2) part-time permanent employment—

(A) provides older individuals with a gradual transition into retirement;

(B) provides employment opportunities to handicapped individuals or others who require a reduced workweek;

(C) provides parents opportunities to balance family responsibilities with the need for additional income;

(D) benefits students who must finance their own education or vocational training;

(E) benefits the Government, as an employer, by increasing productivity and job satisfaction, while lowering turnover rates and absenteeism, offering management more flexibility in meeting work requirements, and filling shortages in various occupations; and

(F) benefits society by offering a needed alternative for those individuals who require or prefer shorter hours (despite the reduced income), thus increasing jobs available to reduce unemployment while retaining the

skills of individuals who have training and experience.

(b) The purpose of this Act is to provide increased part-time career employment opportunities throughout the Federal Government.

“§ 3401. Definitions

“For the purpose of this subchapter—

“(1) ‘agency’ means—

“(A) an Executive agency;

“(B) a military department;

“(C) an agency in the judicial branch;

“(D) the Library of Congress;

“(E) the Botanic Garden; and

“(F) the Office of the Architect of the Capitol; but does not include—

“(i) a Government controlled corporation;

“(ii) the Tennessee Valley Authority;

“(iii) the Alaska Railroad;

“(iv) the Virgin Island Corporation;

“(v) the Panama Canal Company;

“(vi) the Federal Bureau of Investigation, Department of Justice;

“(vii) the Central Intelligence Agency; and

“(viii) the National Security Agency, Department of Defense; and

“(2) ‘part-time career employment’ means part-time employment of 16 to 32 hours a week under a schedule consisting of an equal or varied number of hours per day, whether in a position which would be part-time without regard to this section or one established to allow job-sharing or comparable arrangements, but does not include employment on a temporary or intermittent basis.

“§ 3402. Establishment of part-time career employment programs

“(a) (1) In order to promote part-time career employment opportunities in all grade levels, the head of each agency, by regulation, shall establish and maintain a program for part-time career employment within such agency. Such regulations shall provide for—

“(A) the review of positions which, after such positions become vacant, may be filled on a part-time career employment basis (including the establishment of criteria to be used in identifying such positions);

“(B) procedures and criteria to be used in connection with establishing or converting positions for part-time career employment, subject to the limitations of section 3393 of this title;

“(C) annual goals for establishing or converting positions for part-time career employment, and a timetable setting forth interim and final deadlines for achieving such goals;

“(D) a continuing review and evaluation of the part-time career employment program established under such regulations; and

“(E) procedures for notifying the public of vacant part-time positions in such agency,

utilizing facilities and funds otherwise available to such agency for the dissemination of information.

“(2) The head of each agency shall provide for communication between, and coordination of the activities of, the individuals within such agency whose responsibilities relate to the part-time career employment program established within that agency.

“(3) Regulations established under paragraph (1) of this subsection may provide for such exceptions as may be necessary to carry out the mission of the agency.

“(b) (1) The Civil Service Commission, by regulation, shall establish and maintain a program under which it shall, on the request of an agency, advise and assist such agency in the establishment and maintenance of its part-time career employment program under this subchapter.

“(2) The Commission shall conduct a research and demonstration program with respect to part-time career employment within the Federal Government. In particular, such program shall be directed to—

“(A) determining the extent to which part-time career employment may be used in filling positions which have not traditionally been open for such employment on any extensive basis, such as supervisory, managerial, and professional positions;

“(B) determining the extent to which job-sharing arrangements may be established for various occupations and positions; and

“(C) evaluating attitudes, benefits, costs, efficiency, and productivity associated with part-time career employment, as well as its various sociological effects as a mode of employment.

“§ 3403. Limitations

“(a) An agency shall not abolish any position occupied by an employee in order to make the duties of such position available to be performed on a part-time career employment basis.

“(b) Any person who is employed on a full-time basis in an agency shall not be required to accept part-time employment as a condition of continued employment.

“§ 3404. Personnel ceilings

“In administering any personnel ceiling applicable to an agency (or unit therein), an employee employed by such agency on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee’s regularly scheduled workweek. This section shall become effective on October 1, 1980.

“§ 340.101 Nonapplicability

“(a) If, on the date of enactment of this subchapter, there is in effect with respect to positions within an agency a collective-bargaining agreement which establishes the number of hours of employment a week, then

this subchapter shall not apply to those positions.

“(b) This subchapter shall not require part-time career employment in positions the rate of basic pay for which is fixed at a rate equal to or greater than the minimum rate fixed for GS-16 of the General Schedule.

“§ 340.101 Regulations

“Before any regulation is prescribed under this subchapter, a copy of the proposed regulation shall be published in the FEDERAL REGISTER and an opportunity provided to interested parties to present written comment and, where practicable, oral comment. Initial regulations shall be prescribed not later than 180 days after the date of the enactment of this subchapter.

“§ 3407. Reports

“(a) Each agency shall prepare and transmit on a biannual basis a report to the Office of Personnel Management on its activities under this subchapter, including—

“(1) details on such agency’s progress in meeting part-time career employment goals established under section 3392 of this title; and

“(2) an explanation of any impediments experienced by such agency in meeting such goals or in otherwise carrying out the provisions of this subchapter, together with a statement of the measures taken to overcome such impediments.

“(b) The Commission shall include in its annual report under section 1308 of this title a statement of its activities under this subchapter, and a description and evaluation of the activities of agencies in carrying out the provisions of this subchapter.

“§ 3408. Employee organization representation

“If an employee organization has been accorded exclusive recognition with respect to a unit within an agency, then the employee organization shall be entitled to represent all employees within that unit employed on a part-time career employment basis.”.

(b) Subpart B of the table of chapters of part III of the analysis of chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3385 the following:

“SUBCHAPTER VII—PART-TIME CAREER EMPLOYMENT OPPORTUNITIES

- “Sec.
- “3401. Definitions.
- “3402. Establishment of part-time career employment programs.
- “3403. Limitations.
- “3404. Personnel ceilings.
- “3405. Nonapplicability.
- “3406. Regulations.
- “3407. Reports.

Office of Personnel Management

§ 340.202

“3408. Employee organization representation.

SEC. 4. (a) Section 8347(g) of title 5, United States Code, is amended by adding at the end thereof the following: “However, the Commission may not exclude any employee who occupies a position on a part-time career employment basis (as defined in section 3391(2) of this title).”.

(b) Section 8716(b) of such title 5 is amended—

(1) by striking out of the second sentence “or part-time”;

(2) by striking out “or” at the end of clause (1);

(3) by striking out the period at the end of clause (2) and inserting in lieu thereof “; or”; and

(4) by adding at the end thereof the following:

“(3) an employee who is occupying a position on a part-time career employment basis (as defined in section 3391(2) of this title).”.

(c) (1) Section 8913(b) of such title 5 is amended—

(A) by striking out “or” at the end of clause (1);

(B) by striking out the period at the end of clause (2) and inserting in lieu thereof “; or”; and

(C) by adding at the end thereof the following:

“(3) an employee who is occupying a position on a part-time career employment basis (as defined in section 3391(2) of this title).”.

(2) (A) Section 8906(b) of such title 5 is amended—

(i) by striking out “paragraph (2)” in paragraph (1) and inserting in lieu thereof “paragraphs (2) and (3)”; and

(ii) by adding at the end thereof the following new paragraph:

“(3) In the case of an employee who is occupying a position on a part-time career employment basis (as defined in section 3391 (2) of this title), the biweekly Government contribution shall be equal to the percentage which bears the same ratio to the percentage determined under this subsection (without regard to this paragraph) as the average number of hours of such employee’s regularly scheduled workweek bears to the average number of hours in the regularly scheduled workweek of an employee serving in a comparable position on a full-time career basis (as determined under regulations prescribed by the Commission).”.

(B) The amendments made by subparagraph (A) shall not apply with respect to any employee serving in a position on a part-time career employment basis on the date of the enactment of this Act for such period as the employee continues to serve without a break in service in that or any other position on such part-time basis.

SEC. 5. Each report prepared by an agency under section 3397(a) of title 5, United States

Code (as added by this Act), shall, to the extent to which part-time career employment opportunities have been extended by such agency during the period covered by such report to each group referred to in subparagraphs (A), (B), (C), and (D), of section 2(a)(2) of this Act.

[44 FR 57380, Oct. 5, 1979, as amended at 49 FR 17722, Apr. 25, 1984]

Subpart B—Regulatory Requirements—Part-Time Employment

SOURCE: 44 FR 57380, Oct. 5, 1979; 49 FR 17722, Apr. 25, 1984, unless otherwise noted.

§ 340.201 Regulatory requirements.

This subpart contains the regulations of the Office of Personnel Management which implement the above sections of chapter 34 (as set out in §340.101).

§ 340.202 General.

(a) *Definitions.* *Part-time career employment* means regularly scheduled work of from 16 to 32 hours per week performed by an employee of an agency as defined in 5 U.S.C. 3401 (a) through (f), who has an appointment in tenure group I or II and who becomes employed on such part-time basis on or after April 8, 1979.

Tenure group I applies to employees in the competitive service under career appointments who are not serving probation and permanent employees in the excepted service whose appointments carry no restrictions or conditions.

Tenure group II applies to employees in the competitive service serving probation, career-conditional employees, and career employees in obligated positions. It also includes employees in the excepted service serving trial periods, whose tenure is indefinite solely because they occupy obligated positions; or whose tenure is equivalent to career-conditional in the competitive service.

(b) *Agency Exceptions.* As an exception to the general definition of part-time employment in §340.202(a) and under the authority provided in 5 U.S.C. 3402(a)(3), an agency may permit an employee who has an appointment in tenure group I or II to perform regularly scheduled work of from 1 to 15 hours per week.

§ 340.203

(c) *Mixed Tours of Duty.* The provisions of this subpart and the term “part-time career employment” do not apply to employees with appointments in tenure groups I or II who work under mixed tours of duty. For this purpose, a mixed tour of duty consists of annually recurring periods of full-time, part-time, or intermittent service as long as the employee does not work part-time more than 6 pay periods per calendar year.

[44 FR 57380, Oct. 5, 1979, as amended at 49 FR 17722, Apr. 25, 1984; 60 FR 3061, Jan. 13, 1995]

§ 340.203 Technical assistance.

(a) The Office of Personnel Management shall provide, within available resources, consultation and technical advice and assistance to agencies to aid them in expanding career part-time employment opportunities. This assistance shall include but not be limited to:

- (1) Help in developing part-time career employment programs;
- (2) Information on public and private sector part-time employment practices;
- (3) Development of special recruitment and selection techniques for filling part-time positions;
- (4) Interpretations of part-time employment law, regulations and policy;
- (5) Guidance on job sharing and position restructuring.

(b) Request for information and assistance should be directed to the Associate Director for Staffing Services, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, or the nearest OPM regional office.

§ 340.204 Agency reporting.

(a) Agency reports required under 5 U.S.C. 3407 shall be based on data as of March 31 and September 30 each year and shall be provided to the Office of Personnel Management no later than May 15 and November 15 respectively.

(b) Each agency shall include with such reports a copy of any agencywide part-time career employment program regulations and instructions issued during the 6-month period preceding the report date.

(c) Reports should be sent to the Associate Director for Staffing Services,

5 CFR Ch. I (1–1–20 Edition)

Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

Subpart C [Reserved]

Subpart D—Seasonal and Intermittent Employment

SOURCE: 60 FR 3061, Jan. 13, 1995, unless otherwise noted.

§ 340.401 Definitions.

(a) *Seasonal employment* means annually recurring periods of work of less than 12 months each year. Seasonal employees are permanent employees who are placed in nonduty/nonpay status and recalled to duty in accordance with preestablished conditions of employment.

(b) *Intermittent employment* means employment without a regularly scheduled tour of duty.

§ 340.402 Seasonal employment.

(a) *Appropriate use.* Seasonal employment allows an agency to develop an experienced cadre of employees under career appointment to perform work which recurs predictably year-to-year. Consistent with the career nature of the appointments, seasonal employees receive the full benefits authorized to attract and retain a stable workforce. As a result, seasonal employment is appropriate when the work is expected to last at least 6 months during a calendar year. Recurring work that lasts less than 6 months each year is normally best performed by temporary employees. Seasonal employment may not be used as a substitute for full-time employment or as a buffer for the full-time workforce.

(b) *Length of the season.* Agencies determine the length of the season, subject to the condition that it be clearly tied to nature of the work. The season must be defined as closely as practicable so that an employee will have a reasonably clear idea of how much work he or she can expect during the year. To minimize the adverse impact of seasonal layoffs, an agency may assign seasonal employees to other work during the projected layoff period. While in nonpay status, a seasonal employee may accept other employment,

Federal or non-Federal, subject to the regulations on political activity (part 733 of this title) and on employee responsibilities and conduct (part 735), as well as applicable agency policies. Subject to the limitation on pay from more than one position (5 U.S.C. 5533), a seasonal employee may hold more than one appointment.

(c) *Employment agreement.* An employment agreement must be executed between the agency and the seasonal employee prior to the employee's entering on duty. At a minimum, the agreement must inform the employee:

(1) That he or she is subject to periodic release and recall as a condition of employment,

(2) The minimum and maximum period the employee can expect to work,

(3) The basis on which release and recall procedures will be effected, and

(4) The benefits to which the employee will be entitled while in a non-pay status.

(d) *Release and recall procedures.* A seasonal employee is released to non-pay status at the end of a season and recalled to duty the next season. Release and recall procedures must be established in advance and uniformly applied. They may be based on performance, seniority, veterans' preference, other appropriate indices, or a combination of factors. A seasonal layoff is not subject to the procedures for furlough prescribed in parts 351 and 752 of this title. Reduction in force or adverse action procedures, as applicable, are required for a seasonal layoff that is not in accordance with the employment agreement, for example, if an agency intends to have an employee work less than the minimum amount of time specified in the employment agreement. However, an agency may develop a new employment agreement to reflect changing circumstances.

(e) *Noncompetitive movement.* Seasonal employees serving under career appointment may move to other positions in the same way as other regular career employees.

§ 340.403 Intermittent employment.

(a) *Appropriate use.* An intermittent work schedule is appropriate only when the nature of the work is sporadic and unpredictable so that a tour of duty

cannot be regularly scheduled in advance. When an agency is able to schedule work in advance on a regular basis, it has an obligation to document the change in work schedule from intermittent to part-time or full-time to ensure proper service credit.

(b) *Noncompetitive movement.* Intermittent employees serving under career appointment may move to other positions in the same way as other regular career employees.

PART 351—REDUCTION IN FORCE

Subpart A [Reserved]

Subpart B—General Provisions

Sec.

351.201 Use of regulations.

351.202 Coverage.

351.203 Definitions.

351.204 Responsibility of agency.

351.205 Authority of OPM.

Subpart C—Transfer of Function

351.301 Applicability.

351.302 Transfer of employees.

351.303 Identification of positions with a transferring function.

Subpart D—Scope of Competition

351.401 Determining retention standing.

351.402 Competitive area.

351.403 Competitive level.

351.404 Retention register.

351.405 Demoted employees.

Subpart E—Retention Standing

351.501 Order of retention—competitive service.

351.502 Order of retention—excepted service.

351.503 Length of service.

351.504 Credit for performance.

351.505 Records.

351.506 Effective date of retention standing.

Subpart F—Release From Competitive Level

351.601 Order of release from competitive level.

351.602 Prohibitions.

351.603 Actions subsequent to release from competitive level.

351.604 Use of furlough.

351.605 Liquidation provisions.

351.606 Mandatory exceptions.

351.607 Permissive continuing exceptions.

351.608 Permissive temporary exceptions.