

Rules and Regulations

Federal Register

Vol. 73, No. 212

Friday, October 31, 2008

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 352

RIN 3206-A119

Reemployment Rights

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing final regulations on the detail and transfer of Federal employees to international organizations. The final regulation eliminates the "equalization allowance," modernizes regulatory language, and clarifies that the Department of State is the delegated authority to designate any organization as an international organization.

DATES: This rule is effective on December 1, 2008.

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SUPPLEMENTARY INFORMATION: On October 2, 2007, OPM issued proposed regulations in the **Federal Register** at 72 FR 56019 to make part 352, subpart C, of title 5, Code of Federal Regulations (CFR), consistent with section 3582(b) of title 5, United States Code (U.S.C.). We requested comments on the proposed rule to be submitted by December 3, 2007.

Section 2504 of Public Law 105-277 amended 5 U.S.C. 3582 by eliminating employee entitlement to be paid an "equalization allowance" upon return to Federal service from a transfer to an international organization. The equalization allowance was a payment equal to the difference between the pay, allowances, post differential, and other monetary benefits paid by the

international organization and the pay, allowances, post differential, and other monetary benefits that would have been paid by the employing agency had the employee been detailed to the international organization. Because of the amendment, an employee who transferred, with the consent of the employing agency, to an international organization on or after October 21, 1998, is entitled, upon reemployment, to only the rate of basic pay the employee would have received had the employee remained in the civil service. We proposed removing section 352.310 to reflect this change.

We also proposed revising section 352.309 to make clear agency responsibilities and employee entitlements, and explain action required to retain an employee's coverage under the retirement, health benefits, and group life insurance system when the employee transfers to an international organization. No other substantive changes were proposed in this section.

Employees returning from detail or transfer to an international organization are not entitled to back pay for the time they were absent from the employing agency. However, such employees are entitled to any promotions, position upgrades, or other salary increases they would have received, but for their absence, retroactive to the date such actions otherwise would have taken effect.

Comments

The Office of Personnel Management received comments from three agencies and one individual.

One agency requested that we replace the phrase "period of consent" used in section 352.308(d)(2), with the word "period" and clarify the phrase "all appropriate civil service employment purposes" used in section 352.311(d). We are adopting the agency's recommendation that the phrase "period of consent" should be replaced with the word "period", and have amended section 352.311(d) accordingly. The phrase "all appropriate civil service employment purposes" includes time in grade, tenure, service computation dates, within grade increases, etc.

Another agency suggested that OPM clarify whether individuals serving on term appointments are eligible for details or transfers to international

organizations under this part. The law does not exclude individuals serving on term appointments from coverage. Therefore, individuals serving on term appointments are included under this part. However, 5 U.S.C. 3582 excludes individuals serving on temporary appointments from coverage.

An individual asked OPM to revise section 352.311(b) to include the equalization allowance. OPM cannot adopt this request because Congress repealed this provision in Public Law 105-277.

One agency recommended OPM amend section 352.314(b) by inserting "upon return" at the end of the sentence. We are adopting the agency's recommendation that section 352.314(b) should end with the word "return" and have amended that section accordingly.

OPM received comments from another Federal agency which went beyond the scope of the proposed amendments to the regulation. However, OPM agrees that further information may be helpful to agencies; therefore, we will address these comments in supplementary guidance. These comments are as follows:

- How should an agency determine the pay of an employee if the agency has a pay-for-performance system where pay is linked directly to performance?
- How does an agency make pay actions effective as if the employee were not absent?
- How does an agency evaluate an employee detailed or transferred to an international organization (IO) if the IO does not have a systematic way of evaluating the individual's performance?
- How does an agency determine effective dates for career-ladder promotions for individuals detailed or transferred to an international organization?
- When should position upgrades occur, and should an employee be downgraded upon return if the position the employee held was downgraded in the employee's absence?

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

Paperwork Reduction Act

The information collection requirements contained in this final rule are currently approved by OMB under 3206-A119. This final regulation does not modify this approved collection.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 352

Administrative practice and procedure, Government employees, Reemployment rights.

Office of Personnel Management.

Michael W. Hager,

Acting Director.

■ Accordingly, OPM amends 5 CFR part 352 as follows:

PART 352—REEMPLOYMENT RIGHTS

Subpart C—Detail and Transfer of Federal Employees to International Organizations

■ 1. The authority citation for part 352, subpart C, continues to read:

Authority: 5 U.S.C. 3584, E.O. 11552, 3 CFR, 1966–1970 Comp., p. 954; Section 352.313 also issued under 5 U.S.C. 7701, *et seq.*

§ 352.303 [Removed]

- 2. Remove and reserve § 352.303.
- 3. Revise § 352.304 to read as follows:

§ 352.304 International organizations covered.

(a) An agency may detail or transfer an employee under this subpart, without prior approval, to an organization which the Department of State has designated as an international organization.

(b) An agency may detail or transfer an employee under this subpart to any other public international organization or international organization preparatory commission only when the Department of State agrees that the organization concerned could be designated as an international organization covered by sections 3343 and 3581 of title 5, United States Code.

■ 4. Revise § 352.305 to read as follows:

§ 352.305 Eligibility for detail.

An employee is eligible for detail to an international organization with the rights provided for in, and in accordance with, section 3343 of title 5, United States Code, and this subpart, except the following:

(a) A Presidential appointee (other than a postmaster, Foreign Service

officer or a Foreign Service information officer), regardless of whether the appointment was made by and with the advice and consent of the Senate.

(b) A person serving in the executive branch in a confidential or policy-determining position excepted from the competitive service under Schedule C of part 213 of this chapter.

(c) A person serving under a non-career, limited emergency, or limited term appointment in the Senior Executive Service (SES).

(d) A person serving under a temporary appointment.

■ 5. Revise § 352.306 to read as follows:

§ 352.306 Length of details.

The total length of a detail or several details combined must not exceed 5 consecutive years, except that when the Secretary of State, on the recommendation of the head of the agency, determines it to be in the national interest, the 5 years allowed for details may be extended for up to an additional 3 years. A detail or combination of details and transfers must not exceed 8 years in the aggregate throughout an employee's Federal career.

■ 6. Revise § 352.308(d) to read as follows:

§ 352.308 Effecting employment by transfer.

* * * * *

(d) *Recording requirement.* The agency must furnish the employee with a leave statement, showing his or her annual and sick leave balances at the time of transfer. In addition, the notification of personnel action effecting the employee's separation for transfer must include:

(1) Identification of the international organization to which the employee is transferring,

(2) A clear statement of the period during which the employee has reemployment rights in the agency under section 3582 of title 5, United States Code, and this subpart, and

(3) The legal and regulatory conditions for reemployment.

■ 7. Revise § 352.309 to read as follows:

§ 352.309 Retirement, health benefits, and group life insurance.

(a) *Agency action.* An employee who is transferred to an international organization with the consent of the employing agency is entitled to retain coverage for retirement, health benefits, and group life insurance purposes if he or she so chooses. The period during which coverage, rights, and benefits are retained under this paragraph, during employment with the international

organization, is deemed employment by the United States. At the time an employing Federal agency consents to the transfer of an employee, the agency must advise the employee in writing of the employee's right to continue retirement, health benefits, and group life insurance coverage, as applicable, for the duration of the assignment or transfer. The notice must explain the conditions for continued coverage and the employee's obligations and responsibilities with regard to continued coverage. The notice must also explain that, if the employee elects to retain coverage, the agency will continue to make the agency contributions to the funds, and the employee's coverage will continue as long as employee payments are currently deposited in the respective funds.

(b) *Employee action.* The employee must acknowledge, in writing, receipt of the notice and state whether or not he or she wishes to retain coverage under the retirement, health benefits, and group life insurance systems or any of them by continuing the required employee payments. The employee must make a written election to retain benefits, as applicable, and make arrangements for the required employee payments. An employee who transfers to an international organization is not eligible to participate in the Thrift Savings Plan (TSP) while employed by the international organization even if he or she elects to retain Federal retirement coverage. However, upon reemployment, an employee who elected to retain Federal retirement coverage while employed by the international organization and has made all deposits required for such coverage may make contributions to the TSP which he or she missed as a result of the service with an international organization, and receive make-up agency contributions and lost earnings on the agency contributions, as provided under § 352.311(e).

(c) *Agency responsibility.* For retirement and group life insurance purposes, the employing agency is responsible for determining the applicable rate of pay in accordance with the provisions of section 3583 of title 5, United States Code. The agency is also responsible for collecting, accounting for, and depositing in the respective funds all retirement, health benefits, and group life insurance employee payments required to be made for the purpose of protecting the rights of the employee so transferred; and for accounting for and depositing in the respective funds all agency contributions. The agency must furnish

the employee with specific information as to how, when, and where the payments are to be submitted.

(d) **Coverage.** Employee payments are considered to be currently deposited if received by the agency before, during, or within 3 months after the end of the pay period covered by the deposit. If the contributions are not currently deposited, coverage terminates on the last day of the pay period for which the required contributions were currently deposited, subject to a 31-day extension of group life insurance and health benefits coverage as provided in parts 870 and 890 of this chapter and to the conversion benefits provided in parts 870 and 890 of this chapter. Coverage so terminated may not be re-established before the employee actually enters on duty, on the first day in a pay status in an agency. However, terminated retirement, health benefits, and group life insurance coverage must be reinstated retroactively when, in the judgment of OPM, the failure to make the required current deposit was due to circumstances beyond the employee's control and the required payments were deposited at the first opportunity. Coverage under a system other than the Civil Service Retirement System must be reinstated retroactively if the agency which administers the retirement system determines that the failure to make the required current deposit was due to circumstances beyond the control of the employee and the required payments were deposited at the first opportunity.

§ 352.310 [Removed]

- 8. Remove and reserve § 352.310.
- 9. Revise § 352.311 through § 352.314 to read as follows:

§ 352.311 Reemployment.

(a) An employee who transferred to an international organization with the consent of the employing agency is entitled to be reemployed in his or her former position, or one of like seniority, status, and pay, within 30 days of applying for reemployment if the employee:

(1) Is separated, either voluntarily or involuntarily, without cause, within the term of employment with an international organization; and

(2) Applies for reemployment with the employing agency or its successor no later than 90 days after separation from the international organization.

(b) Pay upon reemployment will be set at that to which the employee would have been entitled had the employee remained with the employing agency.

(c) When an employee's reemployment right is to a position in

the SES, reemployment may be to any position in the SES for which the employee is qualified. The employee must be returned at not less than the SES rate of basic pay as determined under 5 CFR part 534, subpart D, at which the employee was being paid immediately before transfer to the international organization, or if pay has been adjusted under § 352.314(c), at not less than the adjusted pay level.

(d) The period of separation caused by the employment of the employee with the international organization and the period necessary to effect reemployment are creditable service for all appropriate civil service employment purposes (e.g., tenure, service computation date, retirement, time in grade). Employees, upon return, are also entitled to restoration of any sick leave.

(e) An employee who elected to retain Federal retirement coverage while employed by the international organization and has made all deposits required for such coverage may make contributions to the TSP which he or she missed as a result of the service with the international organization, and receive make-up agency contributions and lost earnings on the agency contributions, consistent with applicable TSP requirements.

§ 352.312 When to apply.

An employee may apply for reemployment, in writing, either before or after separation from the international organization. If the employee applies before separation, the 30-day period prescribed in § 352.311 begins either with the date of the application or 30 days before the employee's date of separation from the international organization, whichever is later. If the employee applies for reemployment after separation, the application must be received by the employing agency no later than 90 days after separation from the international organization.

§ 352.313 Failure to reemploy and right of appeal.

(a) When an agency fails to reemploy an employee within 30 days of receiving the employee's application, it must notify the employee, in writing, of the reasons and of the employee's right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency must comply with the provisions of § 1201.21 of this title.

(b) If the agency fails to reach and issue a decision to the employee within 30 days from the date of the application for reemployment, the employee is entitled to appeal the agency's failure to

issue a decision to the Merit Systems Protection Board under the provisions of the Board's regulations.

(c) An employee may submit an appeal, alleging that the agency has failed to comply with any of the other provisions of sections 3343 and 3581–3584 of title 5, United States Code, or of this part, to the Merit Systems Protection Board under the provisions of the Board's regulations.

§ 352.314 Consideration for promotion and pay increases.

(a) The employing agency must consider an employee who is detailed or transferred to an international organization for all promotions for which the employee would be considered if not absent. A promotion based on this consideration is effective on the date it would have been effective if the employee were not absent.

(b) When the position of an employee who is absent on detail or transfer to an international organization is upgraded during the employee's absence, the employing agency must place the employee in the upgraded position upon return.

(c) The employing agency must consider an employee who is detailed or transferred to an international organization from an ungraded pay system for all pay increases for which the employee would have been considered if not absent. An increase is effective on the date it would have been effective if the employee were not absent.

[FR Doc. E8–26009 Filed 10–30–08; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 537

RIN 3206–AK51

Repayment of Student Loans

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing final regulations to revise the rules governing the authority to offer student loan repayment benefits to Federal job candidates or current Federal employees when necessary to recruit or retain highly qualified personnel. These revisions include certain policy changes and clarifications to assist agencies in the administration of the Federal student loan repayment program.