

§ 351.801

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(2) Permit an employee in subgroup III-AD to displace an employee in subgroup III-A or III-B, or permit an employee in subgroup III-A to displace an employee in subgroup III-B consistent with § 351.701; or

(3) Provide competing employees in the excepted service with assignment rights to other positions under the same appointing authority on the same basis as assignment rights provided to competitive service employees under § 351.701 and in paragraphs (a) (1) and (2) of this section.

(b) Provisions adopted by an agency under paragraph (a) of this section:

(1) Shall be consistent with this part;

(2) Shall be uniformly and consistently applied in any one reduction in force;

(3) May not provide for the assignment of an other-than-full-time employee to a full-time position;

(4) May not provide for the assignment of a full-time employee to an other-than-full-time position;

(5) May not provide for the assignment of an employee in a competitive service position to a position in the excepted service; and

(6) May not provide for the assignment of an employee in an excepted position to a position in the competitive service.

[51 FR 319, Jan. 3, 1986, as amended at 62 FR 62502, Nov. 24, 1997]

Subpart H—Notice to Employee

SOURCE: 60 FR 2679, Jan. 11, 1995, unless otherwise noted.

§ 351.801 Notice period.

(a)(1) Each competing employee selected for release from a competitive level under this part is entitled to a specific written notice at least 60 full days before the effective date of release.

(2) At the same time an agency issues a notice to an employee, it must give a written notice to the exclusive representative(s), as defined in 5 U.S.C. 7103(a)(16), of each affected employee at the time of the notice. When a significant number of employees will be separated, an agency must also satisfy the

notice requirements of §§ 351.803 (b) and (c).

(b) When a reduction in force is caused by circumstances not reasonably foreseeable, the Director of OPM, at the request of an agency head or designee, may approve a notice period of less than 60 days. The shortened notice period must cover at least 30 full days before the effective date of release. An agency request to OPM shall specify:

(1) The reduction in force to which the request pertains;

(2) The number of days by which the agency requests that the period be shortened;

(3) The reasons for the request; and

(4) Any other additional information that OPM may specify.

(c) The notice period begins the day after the employee receives the notice.

(d) When an agency retains an employee under § 351.607 or § 351.608, the notice to the employee shall cite the date on which the retention period ends as the effective date of the employee's release from the competitive level.

[60 FR 2678, Jan. 11, 1995, as amended at 60 FR 44254, Aug. 25, 1995; 63 FR 32594, June 15, 1998; 65 FR 25623, May 3, 2000]

§ 351.802 Content of notice.

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

(2) The employee's competitive area, competitive level, subgroup, service date, and three most recent ratings of record received during the last 4 years;

(3) The place where the employee may inspect the regulations and record pertinent to this case;

(4) The reasons for retaining a lower-standing employee in the same competitive level under § 351.607 or § 351.608;

(5) Information on reemployment rights, except as permitted by § 351.803(a); and

(6) The employee's right, as applicable, to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations or to grieve under a negotiated grievance procedure. The agency shall also comply with § 1201.21 of this title.

(b) When an agency issues an employee a notice, the agency must, upon

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the employee's request, provide the employee with a copy of OPM's retention regulations found in part 351 of this chapter.

[60 FR 2678, Jan. 11, 1995, as amended at 60 FR 44254, Aug. 25, 1995; 62 FR 62502, Nov. 24, 1997; 63 FR 32595, June 15, 1998]

§ 351.803 Notice of eligibility for reemployment and other placement assistance.

(a) An employee who receives a specific notice of separation under this part must be given information concerning the right to reemployment consideration and career transition assistance under subparts B (Reemployment Priority List), F, and G (Career Transition Assistance Programs) of part 330 of this chapter. The employee must also be given a release to authorize, at his or her option, the release of his or her resume and other relevant employment information for employment referral to the State unit or entity established under title I of the Workforce Investment Act of 1998 and potential public or private sector employers. The employee must also be given information concerning how to apply both for unemployment insurance through the appropriate State program and benefits available under the State's Workforce Investment Act of 1998 programs, and an estimate of severance pay (if eligible).

(b) When 50 or more employees in a competitive area receive separation notices under this part, the agency must provide written notification of the action, at the same time it issues specific notices of separation to employees, to:

(1) The State or the entity designated by the State to carry out rapid response activities under title I of the Workforce Investment Act of 1998;

(2) The chief elected official of local government(s) within which these separations will occur; and

(3) OPM.

(c) The notice required by paragraph (b) of this section must include:

(1) The number of employees to be separated from the agency by reduction in force (broken down by geographic area or other basis specified by OPM);

(2) The effective date of the separations; and

(3) Any other information specified by OPM, including information needs identified from consultation between OPM and the Department of Labor to facilitate delivery of placement and related services.

[60 FR 2679, Jan. 11, 1995, as amended at 62 FR 62502, Nov. 24, 1997; 65 FR 64133, Oct. 26, 2000]

§ 351.804 Expiration of notice.

(a) A notice expires when followed by the action specified, or by an action less severe than specified, in the notice or in an amendment made to the notice before the agency takes the action.

(b) An agency may not take the action before the effective date in the notice; instead, the agency may cancel the reduction in force notice and issue a new notice subject to this subpart.

[62 FR 62502, Nov. 24, 1997]

§ 351.805 New notice required.

(a) An employee is entitled to a written notice of at least 60 full days if the agency decides to take an action more severe than first specified.

(b) An agency must give an employee an amended written notice if the reduction in force is changed to a later date. A reduction in force action taken after the date specified in the notice given to the employee is not invalid for that reason, except when it is challenged by a higher-standing employee in the competitive level who is reached out of order for a reduction in force action as a result of the change in dates.

(c) An agency must give an employee an amended written notice and allow the employee to decide whether to accept a better offer of assignment under subpart G of this part that becomes available before or on the effective date of the reduction in force. The agency must give the employee the amended notice regardless of whether the employee has accepted or rejected a previous offer of assignment, provided that the employee has not voluntarily separated from his or her official position.

[62 FR 62502, Nov. 24, 1997, as amended at 65 FR 25623, May 3, 2000]