

Implementing Schedule Policy/Career

Briefing for Leaders

U.S. Office of Personnel Management

Overview

- Purpose of today's briefing is to give agency leaders an overview of significant changes in the federal personnel system with the implementation of Schedule Policy/Career.
- These regulations implement Executive Order (EO) 13957, as amended by EO 14171, establishing Schedule Policy/Career as a schedule in the excepted service for career positions of a confidential, policy-determining, policy-making, or policy-advocating (i.e., policy-influencing) character.
- Employees appointed to Schedule Policy/Career positions are:
 - Hired using similar procedures as before
 - At-will employees
 - Eligible for most of the same benefits as all federal employees
- Employees may continue to be represented by labor unions unless and until the Federal Labor Relations Authority (FLRA) removes them from a bargaining unit.

Implementation Timeline

- In planning to implement the Schedule Policy/Career regulations, agencies should be aware of three key actions that must occur, first, before employees are placed into Schedule Policy/Career positions:
 - Publication of the regulations
 - The regulations becoming effective
 - Presidential action placing positions into Schedule Policy/Career
- Employees will move with their positions once the President places the positions into Schedule Policy/Career.
- Agencies with employees appointed under authorities outside of Title 5 (e.g., Titles 10 and 38) should wait for further instruction from OPM before placing positions appropriate for inclusion in Schedule Policy/Career.

Implementation Timeline (cont.)

- Agencies should not wait for the President to issue an executive order to begin implementation activities.
- Once these regulations are made available for public inspection in the Federal Register, agencies should:
 - Modify internal personnel policies necessary to conform to Schedule Policy/Career regulations, such as hiring, discipline, performance management, student loan repayment, and recruitment, relocation, and retention incentives (i.e., 3Rs).
 - Establish internal agency policy on prohibited personnel practices consistent with Section 6 of EO 13957.
 - Prepare bargaining unit clarification petitions with the FLRA as employees may continue to be represented by labor unions unless and until the FLRA clarifies the unit.

OPM Guidance

- OPM published several guidance resources on <https://www.opm.gov/policy-data-oversight/hiring-information/hiring-authorities/schedule-policycareer/#url=Overview> to assist agencies with implementing Schedule Policy/Career regulations on its website:
 - Frequently asked questions and answers
 - Sample policies such as prohibited personnel practices, hiring, and discipline
 - Templates to process key personnel actions and notify employees of the impacts of Schedule Policy/Career
 - Quick reference documents to inform employees, supervisors and managers, and human resources practitioners concerning key features of the regulations

Key Features of Schedule Policy/Career

Recruitment and Hiring

- Schedule Policy/Career will continue to be filled using merit-based hiring procedures:
 - Positions previously in the competitive service will continue to be filled using competitive hiring procedures
 - Positions previously filled in the excepted schedule (e.g., Schedule A, or B) will continue to be filled using those same procedures
 - Hiring must apply veterans' preference as provided for in law and OPM regulations
- Leaders should ensure that both Schedule Policy/Career transfers and new hires receive a statement of the unique characteristics of their positions and acknowledge receipt.

Talent Development and Work/Life

- External Training: Agencies may continue to use appropriated funds to send Schedule Policy/Career employees to external trainings but may not select and assign such employees to academic degree training as defined in 5 USC 4107.
- Telework: Schedule Policy/Career not prohibited under law or OPM guidance from participating in an agency's telework program.

Employee Performance

- Leaders and managers should continue to provide guidance to and set clear expectations for Schedule Policy/Career employees' conduct and performance.
- Leaders and managers may rate Schedule Policy/Career employees pursuant to their internal appraisal system.
- The establishment and use of performance plans should continue to follow all documentation requirements including placement in employees' official personnel folders.
- Schedule Policy/Career employees are excluded from the procedures established under 5 USC 4303 and 5 CFR Part 432 when addressing unacceptable performance.
- Agencies should not use performance improvement plans (PIPs) or unnecessarily place burdensome restrictions on their ability to address performance issues.

Compensation and Benefits

- Awards: Schedule Policy/Career employees will be eligible for awards under 5 USC chapter 45 to the extent permitted under Administration policies.
- Federal Employees Health Benefits (FEHB): Schedule Policy/Career employees maintain eligibility for all FEHB programs.
- Leave: Schedule Policy/Career employees maintain the same leave accruals and eligibility as all federal employees.

Employee Accountability

- Probationary and Trial Periods: Schedule Policy/Career positions subject to a trial period under 5 CFR part 11.
 - Most Schedule Policy/Career employees will not serve a trial period as prior service in the competitive or excepted service counts towards completion of a trial period.
- Schedule Policy/Career employees serve at-will:
 - Excluded from unacceptable performance and adverse action procedures; these are now “one-step” actions.
 - Excluded from whistleblower protection procedures under 5 U.S.C. 2302(b); Section 6 of EO 13957 requires agencies to establish protections against prohibited personnel practices.
- Schedule Policy/Career employees retain protections under laws administered by the Equal Employment Opportunity Commission and Department of Labor (e.g., Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)).
- Leaders should partner with their legal counsel to develop internal procedures and practices for ensuring personnel actions are legally defensible.

Employee Accountability (cont.)

- Leaders should follow their internal agency procedure for disciplinary action.
 - If the internal agency procedure provides notice to the employee, leaders should ensure the notice does not include appeal rights to the Merit Systems Protection Board (MSPB).
 - Similarly, a final separation notice should not include appeal rights to the MSPB.
 - Note – provisions of existing collective bargaining agreements (CBAs) still apply, so continue to follow any required notice and grievance processes.
- Leaders should ensure that their agency has created and implemented a policy on prohibited personnel practices (PPPs).
 - Schedule Policy/Career employees do not have statutory whistleblowing protections.
 - The President directed agencies to establish their own internal PPP policies providing the same protections established under law.

Labor Relations

- Schedule Policy/Career employees are not automatically excluded from collective bargaining:
 - Consult with your human resources and legal counsel whether any of your Schedule Policy/Career positions should be excluded from collective bargaining under 5 USC 7112(b), including positions that are required or authorized to formulate, determine, or influence the policies of the agency.
- Leaders should honor provisions of an existing CBA that covers Schedule Policy/Career employees who are in a bargaining unit.
 - Note that, while Schedule P/C employees are statutorily excluded from coverage under chapters 43 and 75, they may be able to grieve similar matters under an existing collective bargaining agreement.

Separation and Retirement

- As with any employee, agencies should ensure they appropriately document the reason(s) for the separation of a Schedule Policy/Career employee.
- No effect on retirement benefits: retirement eligibility is determined based on an employee's age and years of federal service.
- Eligibility for an immediate retirement would permit the former employee to retain their Federal Employees Health Benefits (FEHB) health insurance benefits provided they meet the eligibility requirements for continued coverage.

Important Notes

- Schedule Policy/Career is not appropriate as a workforce reshaping tool or a means to avoid following Reduction In Force (RIF) procedures:
 - OPM's RIF regulations and procedures will continue to apply to, and protect, Schedule Policy/Career employees, requiring that RIFs affecting these employees be carried out fairly and providing for appeal rights.
- Reminder: Agencies make recommendations on which positions should be moved to Schedule Policy/Career to OPM, and OPM presents those recommendations to the President. As such, the President maintains the ultimate authority to move positions appointed under Title 5 to Schedule Policy/Career.
- Agencies that appoint employees under agency-specific statutory personnel authorities, including Title 5 authorities other than government-wide competitive service and excepted service appointment authorities, must not place such positions into Schedule Policy/Career until OPM issues further guidance. This includes positions covered by agency-specific personnel systems or appointing authorities established by statute, whether located in Title 5 or another legal authority.

Questions

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