



DEPARTMENT OF DEFENSE
DEFENSE CIVILIAN PERSONNEL ADVISORY SERVICE
4800 MARK CENTER DRIVE
ALEXANDRIA, VA 22350-1100

HESTER.DANIE
L.J.1134493565

Digitally signed by
HESTER.DANIEL.J.1134493565
Date: 2022.12.23 10:46:06 -05'00'

FOR: CIVILIAN PERSONNEL POLICY COUNCIL MEMBERS

FROM: Defense Civilian Personnel Advisory Service Director, Mr. Daniel J. Hester

SUBJECT: Repeal of the 2-Year Probationary Period – Effective Date December 31, 2022

AUDIENCE: Appropriated Fund Employees

ACTION: Disseminate to Department of Defense (DoD) Human Resources Practitioners and Hiring Managers

REFERENCES:

- a. Deputy Assistant Secretary of Defense for Civilian Personnel Policy (DASD (CPP)) Memorandum, “Repeal of the 2-Year Probationary Period,” December 23, 2022 (attached)
- b. Section 1106 of National Defense Authorization Act for Fiscal Year 2022 (Public Law 117-81), <https://www.govinfo.gov/content/pkg/PLAW-117publ81/pdf/PLAW-117publ81.pdf>
- c. Section 1599e of Title 10 United States Code, <https://www.govinfo.gov/content/pkg/USCODE-2020-title10/pdf/USCODE-2020-title10-subtitleA-partII-chap81-sec1599e.pdf>
- d. Acting DASD, (CPP) Memorandum, “Probationary Period for New Employees,” September 27, 2016 (attached)
- e. Frequently Asked Questions: Repeal of the 2- Year Probationary Period in the DoD (attached)

BACKGROUND/INTENT: Reference (a) is the guidance directed by reference (b), which repeals reference (c) , thereby discontinuing the use of the 2-year probationary period in DoD effective December 31, 2022. Individuals newly appointed to permanent positions within the competitive service in DoD or receiving career appointments in the Senior Executive Service (covered employees) on or after December 31, 2022, will be subject to a 1-year probationary period. Covered employees currently serving a 2-year probationary period will not be impacted and will continue to serve the duration of their 2-year probationary period. As such, reference (d) is hereby rescinded. To assist with this transition, Frequently Asked Questions (reference e) are provided to address common questions regarding this matter.

POINT OF CONTACT: Ms. Amy M. Stone, Labor and Employee Relations Specialist, Defense Civilian Personnel Advisory Service, amy.m.stone8.civ@mail.mil.

Attachments:
As stated

www.dcpas.osd.mil

Twitter @DCPASExcellence <https://twitter.com/DCPASExcellence>

LinkedIn @DCPAS-Excellence <https://www.linkedin.com/company/dcpas-excellence>



MANPOWER AND
RESERVE AFFAIRS

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
1500 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1500

MEMORANDUM FOR DEPUTY ASSISTANT, CIVILIAN PERSONNEL (MANPOWER
AND RESERVE AFFAIRS) (DEPARTMENT OF ARMY)
DEPUTY ASSISTANT SECRETARY, CIVILIAN HUMAN
RESOURCES (DEPARTMENT OF THE NAVY)
ASSISTANT DEPUTY CHIEF OF STAFF (MANPOWER,
PERSONNEL, AND SERVICES (DEPARTMENT OF THE
AIR FORCE)
DIRECTOR, HUMAN RESOURCES DIRECTORATE
(WASHINGTON HEADQUARTERS SERVICES)
EXECUTIVE DIRECTOR, HUMAN RESOURCES (DEFENSE
LOGISTICS AGENCY)
DIRECTOR FOR HUMAN RESOURCES (DEFENSE FINANCE
AND ACCOUNTING SERVICE)

SUBJECT: Repeal of the 2-Year Probationary Period

References: (a) Section 1106 of National Defense Authorization Act for Fiscal Year 2022,
Public Law (PL) 117-81
(b) Section 1599e of Title 10 United States Code

Reference (a) repeals Title 10 United States Code (U.S.C.) Section 1599e, *Probationary period for employees*, thereby discontinuing the use of the 2-year probationary period in the Department of Defense (DoD), effective December 31, 2022. Individuals newly appointed to permanent positions within the competitive service in DoD or receiving career appointments in the Senior Executive Service (covered employees) on or after December 31, 2022 will be subject to a 1-year probationary period. Covered employees currently serving a 2-year probationary period will not be impacted and will continue to serve the duration of their 2-year probationary period. As such, the Acting Deputy Assistant Secretary of Defense for Civilian Personnel Policy Memorandum, "Probationary Period for New Employees," September 27, 2016 (Attachment 1), is hereby rescinded.

Please ensure that new appointees, employees currently completing 2-year probationary periods, and their supervisors are aware of the length of individuals' probationary periods, and that future vacancy announcements are properly notated. Notifications of Personnel Actions (Standard Form-50s) for new appointees should be properly annotated based upon the effective date of the appointment. The attached Frequently Asked Questions (Attachment 2) addresses common issues associated with the transition back to a one-year probationary period.

My point of contact is Ms. Laura (Lex) Stanley, Defense Civilian Personnel Advisory Service, Labor and Employee Relations Division, who may be reached at (571) 372-1713, or via email at laura.a.stanley2.civ@mail.mil.

SPEIGHT.NANC
Y.A.1395401005

Digitally signed by
SPEIGHT.NANCY.A.1395401
005
Date: 2022.12.23 07:23:15
-05'00'

Nancy Anderson Speight
Deputy Assistant Secretary
Civilian Personnel Policy

Attachments:

- 1 - Acting Deputy Assistant Secretary of Defense for Civilian Personnel Policy Memorandum, "Probationary Period for New Employees," September 27, 2016
- 2 – Frequently Asked Questions: Repeal of the 2-Year Probationary Period in the Department of Defense



MANPOWER AND
RESERVE AFFAIRS

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

SEP 27 2016

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY, CIVILIAN PERSONNEL
(MANPOWER AND RESERVE AFFAIRS) (DEPARTMENT OF
ARMY)
DEPUTY ASSISTANT SECRETARY, CIVILIAN HUMAN
RESOURCES (DEPARTMENT OF THE NAVY)
ASSISTANT DEPUTY CHIEF OF STAFF (MANPOWER,
PERSONNEL AND SERVICES) (DEPARTMENT OF THE AIR
FORCE)
DIRECTOR, HUMAN RESOURCES DIRECTORATE
(WASHINGTON HEADQUARTERS SERVICES)
EXECUTIVE DIRECTOR, HUMAN RESOURCES
(DEFENSE LOGISTICS AGENCY)
DIRECTOR FOR HUMAN RESOURCES
(DEFENSE FINANCE AND ACCOUNTING SERVICE)

SUBJECT: Probationary Period for New Employees

The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 amended title 10, United States Code (U.S.C.), by adding section 1599e (attached). This new section requires that the appointment of "covered employees" within the Department of Defense (DoD) shall become final only after the employee has served a probationary period of two years. Covered employees include individuals who are appointed to permanent positions in the competitive service and individuals who received career appointments in the Senior Executive Service (SES) within DoD on or after November 26, 2015. This change does not apply to individuals appointed prior to that date.

The NDAA for FY 2016 also allows the Secretaries of Defense and the Military Departments to exercise their discretion to extend a covered employee's probationary period past the new two year requirement. Departmental policy for this provision is currently under development.

Notwithstanding the change in the length of probationary service as specified above, there are no changes in determining when a probationary period is required. Employees who have completed a probationary period under an initial appointment in the competitive service, having attained full appeal rights to the Merit Systems Protection Board, do not have to serve another or extended probationary period under this authority. There are no changes for crediting prior Federal civilian service toward completion of a probationary period for competitive service employees, as outlined in 5 C.F.R. §315.802(b) and 5 C.F.R. §317.503(d)(4) for members of the SES. There is also no change in crediting periods of absence under 5 C.F.R. §§315.802(c) and 317.503(d)(1)-(3).

Please ensure that new appointees and their supervisors are aware of the length of the probationary period, and that vacancy announcements are properly notated. Notifications of Personnel Actions (SF-50) for new appointees should likewise be properly notated (this may occur manually pending updates to the Defense Civilian Personnel Data System).

My point of contact is Ms. Megan Maciejewski, Defense Civilian Personnel Advisory Service, Staffing Policy Division, who may be reached at (571) 372-1538, or via email at megan.e.maciejewski.civ@mail.mil.



Julie Blanks
Acting Deputy Assistant Secretary of Defense
Civilian Personnel Policy

Attachment:
As stated

SEC. 1105. REQUIRED PROBATIONARY PERIOD FOR NEW EMPLOYEES OF THE DEPARTMENT OF DEFENSE.

(a) REQUIRED PROBATIONARY PERIOD.—

(1) IN GENERAL.—Chapter 81 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 1599e. Probationary period for employees

“(a) IN GENERAL.—Notwithstanding sections 3321 and 3393(d) of title 5, the appointment of a covered employee shall become final only after such employee has served a probationary period of two years. The Secretary concerned may extend a probationary period under this subsection at the discretion of such Secretary.

“(b) DEFINITIONS.—In this section:

“(1) The term ‘covered employee’ means any individual—

“(A) appointed to a permanent position within the competitive service at the Department of Defense; or

“(B) appointed as a career appointee (as that term is defined in section 3132(a)(4) of title 5) within the Senior Executive Service at the Department.

“(2) The term ‘Secretary concerned’ includes the Secretary of Defense with respect to employees of the Department of Defense who are not employees of a military department.

“(c) EMPLOYMENT BECOMES FINAL.—Upon the expiration of a covered employee’s probationary period under subsection (a), the supervisor of the employee shall determine whether the appointment becomes final based on regulations prescribed for such purpose by the Secretary of Defense.

“(d) APPLICATION OF CHAPTER 75 OF TITLE 5 FOR EMPLOYEES IN THE COMPETITIVE SERVICE.—With respect to any individual described in subsection (b)(1)(A) and to whom this section applies, section 7501(1) and section 7511(a)(1)(A)(ii) of title 5 shall be applied to such individual by substituting ‘completed 2 years’ for ‘completed 1 year’ in each instance it appears.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 81 of such title is amended by adding at the end the following new item:

“1599e. Probationary period for employees.”.

(b) APPLICATION.—The amendment made by subsection (a) shall apply to any covered employee (as that term is defined in section 1599e of title 10, United States Code, as added by such subsection) appointed after the date of the enactment of this section.

(c) CONFORMING AMENDMENTS.—Title 5, United States Code, is amended—

(1) in section 3321(c), by inserting at the end before the period the following: “, or any individual covered by section 1599e of title 10”;

(2) in section 3393(d), by adding at the end the following:

“The preceding sentence shall not apply to any individual covered by section 1599e of title 10.”;

(3) in section 7501(1), by striking “or who” and inserting “or, except as provided in section 1599e of title 10, who”;

(4) in section 7511(a)(1)(A)(ii), by inserting “except as provided in section 1599e of title 10,” before “who”; and

(5) in section 7541(1)(A), by inserting “or section 1599e of title 10” after “this title”.

FREQUENTLY ASKED QUESTIONS: REPEAL OF THE 2-YEAR PROBATIONARY PERIOD IN THE DEPARTMENT OF DEFENSE

Section 1106 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 repealed 10 U.S.C. § 1599e, *Probationary period for employees*, effective December 31, 2022.

Key Points:

- Section 1105 of the NDAA for FY 2016, *Required probationary period for new employees of the Department of Defense (DoD)*, codified at 10 U.S.C. §1599e, established a 2-year probationary period for individuals appointed to permanent positions within the competitive service in DoD or who received a career appointment in the Senior Executive Service (covered employees) on or after November 26, 2015. This provision also authorized DoD to extend probationary periods further on a discretionary basis.
- The repeal of §1599e includes both the rescission of the two-year probationary period and the authority to extend probationary periods.
- Covered employees appointed to a position effective on or after December 31, 2022, will be subject to a 1-year probationary period in accordance with 5 U.S.C. §§ 7501 and 7511.
- Covered employees appointed on or after November 26, 2015, but prior to December 31, 2022, will continue to serve out the remainder of the 2-year probationary period.

Questions & Answers

Q1: When will the repeal of the DoD 2-year probationary period go into effect?

A1: The repeal of §1599e becomes effective December 31, 2022. Therefore, individuals appointed to permanent positions in the competitive service and any individuals who received career appointments in the Senior Executive Service within the DoD effective on or after December 31, 2022, will only be required to serve a 1-year probationary period, subject to any creditable service.

Q2: Do individuals currently serving on a 2-year probationary period convert to a 1-year probationary period effective December 31, 2022?

A2: No. Individuals currently serving a 2-year probationary period pursuant to §1599e will complete the remainder of their probationary periods, subject to any prior creditable service. There is no provision in section 1106 of NDAA FY 2022 for early termination of 2-year probationary periods, which commenced but were not completed prior to December 31, 2022.

Q3: How will this impact individuals transferring into the DoD, or other situations in which DoD individuals may be required to serve a subsequent probationary period?

A3: The rescission of §1599e impacts only the timeframe required to complete a probationary period within DoD for appointments on or after December 31, 2022. It does not impact the criteria associated with making determinations for other related matters, such as when individuals are required to serve a subsequent probationary period due to selection for another

position, when crediting prior Federal service, or other circumstances warranting a subsequent probationary period.

Q4: Is the change back to a 1-year probationary period considered a change to employees' conditions of employment?

A4: No. The length of the probationary period does not imply a change in employees' conditions of employment.

Q5: How will covered individuals' Notifications of Personnel Action (Standard Form - 50's) be annotated to reflect that they are serving a 1-year probationary period?

A5: For appointments effected on or after December 31, 2022, SF-50s should be properly annotated with either remark code E18, "Appointment is subject to completion of 1-year initial probationary period beginning (date)" or E25, "Subject to satisfactory completion of 1-year SES probationary period beginning (date)" based upon the type of appointment and requirement to serve a probationary period.

Q6: What is the status of the changes necessary in the Defense Civilian Personnel Data System (DCPDS), as the result of this repeal, and when will the system changes be effective?

A6: The Defense Civilian Personnel Advisory Service (DCPAS), Labor and Employee Relations Line of Business is coordinating the necessary system changes (i.e., auto-populating business rule codes and end-dating remarks codes) to DCPDS with the DCPAS, Enterprise Solutions & Integration Office. Until system changes can be made, and where individuals are subject to a 1-year probationary period, appointments effected on or after December 31, 2022 will require Human Resource Specialists to manually change the "Date Probationary Period Ends" field to reflect the correct date on which the individual's probationary period ends. Unless the individual has creditable prior service, this date should be reflected as the day before the anniversary date of the appointment effective date. Additional information will be shared with HR Specialists once the system changes have been made.

Q7: Does this change impact individuals' appeal rights with the Merit Systems Protection Board (MSPB)?

A7: No. The probationary period is the last step in the hiring process. It provides the DoD an opportunity to assess, on the job, an employee's overall fitness and qualifications for continued employment. The rescission of §1599e does not impact the limited appeal rights to the MSPB for individuals terminated during their probationary period, other than shortening the timeframe before an individual obtains full MSPB appeal rights.

Q8: Under what conditions may a supervisor extend a probationary period?

A8: There are no authorities under which a supervisor can extend a probationary period.

Q9. Are individuals in the excepted service and covered by a trial period affected by this change?

A9: No. This change only impacts those individuals who are appointed to a competitive service position or receive a career appointment in the Senior Executive Service on or after December 31, 2022. There is no impact to individuals appointed to excepted service positions.

Q10: Are there any Labor Relation obligations associated with the repeal?

A10: As a matter of law, the rescission of §1599e carries no substantive bargaining obligations. However, DoD Components are encouraged to review any collective bargaining agreements to ensure agreements do not conflict with the impacts of this repeal and communicate with union partners as appropriate.