

TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES

PART III - EMPLOYEES

Subpart A - General Provisions

CHAPTER 23 - MERIT SYSTEM PRINCIPLES

SECTION 2302 - PROHIBITED PERSONNEL PRACTICES

**§ 2302. Prohibited personnel practices**

(a)(1) For the purpose of this title, "prohibited personnel practice" means any action described in subsection (b).

(2) For the purpose of this section -

(A) "personnel action" means -

(i) an appointment;

(ii) a promotion;

(iii) an action under chapter 75 of this title or other disciplinary or corrective action;

(iv) a detail, transfer, or reassignment;

(v) a reinstatement;

(vi) a restoration;

(vii) a reemployment;

(viii) a performance evaluation under chapter 43 of this title;

(ix) a decision concerning pay, benefits, or awards, concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph;

(x) a decision to order psychiatric testing or examination; and

(xi) any other significant change in duties, responsibilities, or working conditions; with respect to an employee in, or applicant for, a covered position in an agency, and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31;

(B) "covered position" means, with respect to any personnel action, any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include any position which is, prior to the personnel action -

- (i) excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or
  - (ii) excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration; and
- (C) "agency" means an Executive agency and the Government Printing Office, but does not include -
  - (i) a Government corporation, except in the case of an alleged prohibited personnel practice described under subsection (b)(8);
  - (ii) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or
  - (iii) the General Accounting Office.
- (b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority -
  - (1) discriminate for or against any employee or applicant for employment -
    - (A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);
    - (B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);
    - (C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));
    - (D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or
    - (E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;
  - (2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of -
    - (A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

- (B) an evaluation of the character, loyalty, or suitability of such individual;
- (3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;
- (4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;
- (5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;
- (6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;
- (7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;
- (8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of -
  - (A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences -
    - (i) a violation of any law, rule, or regulation, or
    - (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
  - (B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences -

- (i) a violation of any law, rule, or regulation, or
    - (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
  - (9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of -
    - (A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;
    - (B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);
    - (C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or
    - (D) for refusing to obey an order that would require the individual to violate a law;
  - (10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;
  - (11) (A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or
    - (B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement; or
  - (12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title. This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.
- (c) The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring (in consultation with the Office of Special

Counsel) that agency employees are informed of the rights and remedies available to them under this chapter and chapter 12 of this title. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

- (d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under -
- (1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
  - (2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;
  - (3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;
  - (4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or
  - (5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.
- (e)(1) For the purpose of this section, the term “veterans' preference requirement” means any of the following provisions of law:
- (A) Sections 2108, 3305(b), 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317(b), 3318, 3320, 3351, 3352, 3363, 3501, 3502(b), 3504, and 4303(e) and (with respect to a preference eligible referred to in section 7511(a)(1)(B)) subchapter II of chapter 75 and section 7701.
  - (B) Sections 943(c)(2) and 1784(c) of title 10.
  - (C) Section 1308(b) of the Alaska National Interest Lands Conservation Act.
  - (D) Section 301(c) of the Foreign Service Act of 1980.
  - (E) Sections 106(f), 7281(e), and 7802(5) of title 38.
  - (F) Section 1005(a) of title 39.
  - (G) Any other provision of law that the Director of the Office of Personnel Management designates in regulations as being a veterans' preference requirement for the purposes of this subsection.

(H) Any regulation prescribed under subsection (b) or (c) of section 1302 and any other regulation that implements a provision of law referred to in any of the preceding subparagraphs.

- (2) Notwithstanding any other provision of this title, no authority to order corrective action shall be available in connection with a prohibited personnel practice described in subsection (b)(11). Nothing in this paragraph shall be considered to affect any authority under section 1215 (relating to disciplinary action).

Source: (Added Pub. L. 95-454, title I, § 101(a), Oct. 13, 1978, 92 Stat. 1114; amended Pub. L. 101-12, § 4, Apr. 10, 1989, 103 Stat. 32; Pub. L. 101-474, § 5(d), Oct. 30, 1990, 104 Stat. 1099; Pub. L. 102-378, § 2(5), Oct. 2, 1992, 106 Stat. 1346; Pub. L. 103-94, § 8(c), Oct. 6, 1993, 107 Stat. 1007; Pub. L. 103-359, title V, § 501(c), Oct. 14, 1994, 108 Stat. 3429; Pub. L. 103-424, § 5, Oct. 29, 1994, 108 Stat. 4363; Pub. L. 104-197, title III, § 315(b)(2), Sept. 16, 1996, 110 Stat. 2416, Pub. L. 104-201, div. A, title XI, § 1122(a)(1), title XVI, § 1615(b), Sept. 23, 1996, 110 Stat. 2687, 2741; Pub. L. 105-339, § 6, Oct. 31, 1998, 112 Stat. 3187-88; Pub. L. 108-136, § 921(g), Nov. 24, 2003, 2003, 117 Stat. 1570.)

#### REFERENCES IN TEXT

The civil service laws, referred to in subsec. (c), are set out in this title. See, particularly, section 3301 et seq. of this title.

#### AMENDMENTS

- 2003 - Subsec. (a)(2)(C)(ii). Pub. L. 108-136, § 921(g), provided: "REFERENCES.--Any reference to the National Imagery and Mapping Agency in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the National Geospatial-Intelligence Agency.
- 1998 - Subsec. (a)(1). Pub. L. 105-339, § 6, amended par. (a)(1). Prior to amendment, par. (1) read as follows: For the purpose of this title, "prohibited personnel practice" means - (A) Any action described in subsection (b) of this section; or (B) Any action or failure to act that is designated as a prohibited personnel action under section 1599c(a) of title 10.
- Subsec. (b)(10) to (b)(12). Pub. L. 105-339, § 6, redesignated par. (11) as par. (12), inserted a new par. (11) and added par. (12).
- Subsec. (e). Added by Pub. L. 105-339, § 6.
- 1996 - Subsec. (a)(1). Pub. L. 104-201, § 1615(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "For the purpose of this title, 'prohibited personnel practice' means any action described in subsection (b) of this section."

Subsec. (a)(2)(C)(ii). Pub. L. 104-201, § 1122(a)(1), substituted "National Imagery and Mapping Agency" for "Central Imagery Office".

Subsec. (b)(2). Pub. L. 104-197 amended par. (2) generally.

Prior to amendment, par. (2) read as follows: "solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action except as provided under section 3303(f);".

1994 - Subsec. (a)(2)(A). Pub. L. 103-424, § 5(a)(3), in concluding provisions, inserted before semicolon ", and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31".

Subsec. (a)(2)(A)(x), (xi). Pub. L. 103-424, § 5(a)(1), (2), added cls. (x) and (xi) and struck out former cl. (x) which read as follows: "any other significant change in duties or responsibilities which is inconsistent with the employee's salary or grade level;".

Subsec. (a)(2)(B). Pub. L. 103-424, § 5(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: " 'covered position' means any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include -

"(i) a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

"(ii) any position excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration."

Subsec. (a)(2)(C)(i). Pub. L. 103-424, § 5(c), inserted before semicolon ", except in the case of an alleged prohibited personnel practice described under subsection (b)(8)".

Subsec. (a)(2)(C)(ii). Pub. L. 103-359 inserted "the Central Imagery Office," after "Defense Intelligence Agency,".

Subsec. (c). Pub. L. 103-424, § 5(d), inserted before period at end of first sentence ", and for ensuring (in consultation with the Office of Special Counsel) that agency employees are informed of the rights and remedies available to them under this chapter and chapter 12 of this title".

1993 - Subsec. (b)(2). Pub. L. 103-94 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "solicit or consider any

recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of - "(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or "(B) an evaluation of the character, loyalty, or suitability of such individual;".

1992 - Subsec. (b)(8)(B). Pub. L. 102-378 substituted "Special Counsel" for "Special Counsel of the Merit Systems Protection Board".

1990 - Subsec. (a)(2)(C). Pub. L. 101-474 struck out ", the Administrative Office of the United States Courts," after "means an Executive agency".

1989 - Subsec. (b)(8). Pub. L. 101-12, § 4(a), in introductory provision inserted ", or threaten to take or fail to take," after "fail to" and substituted "because of" for "as a reprisal for", in subpar. (A) substituted "any disclosure" for "a disclosure", in subpar. (A)(ii) inserted "gross" before "mismanagement", in subpar. (B) substituted "any disclosure" for "a disclosure", and in subpar. (B)(ii) inserted "gross" before "mismanagement".

Subsec. (b)(9). Pub. L. 101-12, § 4(b), amended par. (9) generally. Prior to amendment, par. (9) read as follows: "take or fail to take any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation;".

#### EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 1122(a)(1) of Pub. L. 104-201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104-201, set out as a note under section 193 of Title 10, Armed Forces.

Section 315(c) of Pub. L. 104-197 provided that: "This section (amending this section and section 3303 of this title) shall take effect 30 days after the date of the enactment of this Act (Sept. 16, 1996)."

#### SAVINGS PROVISION OF 1998 AMENDMENT

This section [§ 6 of Pub. L. 105-339, affecting subsections (b)(10) to (b)(12) and subsection (e)] shall be treated as if it had never been enacted for purposes of any personnel action (within the meaning of section 2302 of title 5, United States Code) preceding the date of enactment of this Act [Oct. 31, 1998].

#### EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 103-94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any penalty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purpose of sustaining any proper proceeding or action for enforcement of that penalty,



forfeiture, or liability, and no provision of Pub. L. 103-94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103-94 had not been enacted, see section 12 of Pub. L. 103-94, set out as an Effective Date; Savings Provision note under section 7321 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1204, 1212, 1214, 1221, 2105, 2301, 2303, 3352, 4505a, 4703, 5754, 5755, 7116, 7121, 7701 of this title; title 2 section 1371; title 7 sections 6932, 6962; title 10 sections 1599c, 1612; title 22 sections 3664, 3905, 4115; title 31 section 732; title 38 sections 4303, 4315, 4331.