

## § 351.404

(2) Competitive level determinations are based on each employee's official position, not the employee's personal qualifications.

(3) Sex may not be the basis for a competitive level determination, except for a position OPM designates that certification of eligibles by sex is justified.

(4) A probationary period required by subpart I of part 315 of this chapter for initial appointment to a supervisory or managerial position is not a basis for establishing a separate competitive level.

(b) Each agency shall establish separate competitive levels according to the following categories:

(1) *By service.* Separate levels shall be established for positions in the competitive service and in the excepted service.

(2) *By appointment authority.* Separate levels shall be established for excepted service positions filled under different appointment authorities.

(3) *By pay schedule.* Separate levels shall be established for positions under different pay schedules.

(4) *By work schedule.* Separate levels shall be established for positions filled on a full-time, part-time, intermittent, seasonal, or on-call basis. No distinction may be made among employees in the competitive level on the basis of the number of hours or weeks scheduled to be worked.

(5) *By trainee status.* Separate levels shall be established for positions filled by an employee in a formally designated trainee or developmental program having all of the characteristics covered in § 351.702(e)(1) through (e)(4) of this part.

(c) An agency may not establish a competitive level based solely upon:

(1) A difference in the number of hours or weeks scheduled to be worked by other-than-full-time employees who would otherwise be in the same competitive level;

(2) A requirement to work changing shifts;

(3) The grade promotion potential of the position; or

## 5 CFR Ch. I (1-1-03 Edition)

(4) A difference in the local wage areas in which wage grade positions are located.

[51 FR 319, Jan. 3, 1986, as amended at 60 FR 3062, Jan. 13, 1995; 62 FR 62500, Nov. 24, 1997]

### § 351.404 Retention register.

(a) When a competing employee is to be released from a competitive level under this part, the agency shall establish a separate retention register for that competitive level. The retention register is prepared from the current retention records of employees. Upon displacing another employee under this part, an employee retains the same status and tenure in the new position. Except for an employee on military duty with a restoration right, the agency shall enter on the retention register, in the order of retention standing, the name of each competing employee who is:

(1) In the competitive level;

(2) Temporarily promoted from the competitive level by temporary or term promotion; or

(3) Detailed from the competitive level under 5 U.S.C. 3341 or other appropriate authority.

(b)(1) The name of each employee serving under a time limited appointment or promotion to a position in a competitive level shall be entered on a list apart from the retention register for that competitive level, along with the expiration date of the action.

(2) The agency shall list, at the bottom of the list prepared under paragraph (b)(1) of this section, the name of each employee in the competitive level with a written decision of removal under part 432 or 752 of this chapter.

[51 FR 319, Jan. 3, 1986, as amended at 62 FR 62500, Nov. 24, 1997]

### § 351.405 Demoted employees.

An employee who has received a written decision under part 432 or 752 of this chapter to demote him or her competes under this part from the position to which he or she will be or has been demoted.

[62 FR 62500, Nov. 24, 1997]