

Part D. Hiring Flexibilities During a Pandemic Health Crisis

Current law and regulations provide numerous human resources flexibilities to assist agencies affected by a pandemic health crisis. These flexibilities include hiring authorities to quickly staff critical positions for a short-term response as well as for longer periods, if needed. Agencies may use some of these hiring authorities immediately; others require OPM approval.

Agencies must also be aware of potential issues relating to employees who want to resign or retire and of the obligations to employees in the National Guard and Reserves under the Uniformed Services Employment and Reemployment Rights Services Act.

The following questions and answers cover these and other staffing-related issues. Agency managers and employees should review internal agency policies and/or collective bargaining agreements which may also address these issues. This guidance applies to the Federal civilian workforce. Agencies are encouraged to consult with their procurement staff for information about flexibilities relating to contract workers.

a. Hiring Flexibilities That Do Not Require OPM Approval

1. *What hiring flexibilities are available for agencies to quickly staff critical positions without seeking OPM approval?*

Agencies may use any of the following without OPM approval:

- 30-day appointments to positions for which a critical hiring need exists under Schedule A (5 CFR 213.3102(i)(2))
- 1-year, 1040 work hours per year appointments in remote/isolated locations under Schedule A (5 CFR 213.3102(i)(1))
- Temporary Appointments, not-to-exceed 1 year under 5 CFR part 316
- Direct Hire Authority (DHA) - previously approved/established
- Re-hiring former employees (Reinstatements)
- Re-hiring retirees (when the retiree's salary is offset by the annuity amount)
- Contracting with private sector temporary firms.

These authorities generally have fewer procedural steps than other hiring authorities. Of course, agencies retain the ability to use any hiring flexibilities currently available to them.

2. *Would an agency have to advertise pandemic-related critical positions on USAJOBS before using these authorities?*

Advertising positions on USAJOBS is not required for the first three authorities listed in the previous question (Q-1). An agency would have to advertise the position before using DHA or re-hiring a former employee or an annuitant if the appointment will last longer than 120 days, including extensions. Contracting with a private sector temporary firm is done under the Federal Acquisition Regulations.

3. *Will the regulatory requirements for using these authorities be suspended or revised when used during a pandemic health crisis?*

No. The regulations governing these authorities apply unless or until the President specifically suspends or waives them.

4. *In what situations would agencies use these authorities?*

Some examples of when these authorities may be useful include the following:

- 30-day appointments and appointments of up to 120 days may be used to employ individuals with specialized knowledge, skills, abilities, or competencies immediately to address a pandemic health crisis while the agency determines whether longer-term staffing options will be needed.
- The 1-year, 1040 work hours per year authority could be useful if a pandemic health crisis affects only an isolated geographic area.

b. Hiring Flexibilities That Require OPM Approval

1. *What hiring flexibilities might an agency need to request from OPM during a pandemic health crisis?*

Agencies may request the following hiring flexibilities from OPM:

- Excepted service Schedule A or B agency-specific appointing authority
- Salary offset waivers to re-hire retirees to deal with emergency situations (reemploying annuitants without a salary offset)
- Rehire retirees or others who left the Federal Government with buyouts (reemploying buyout annuitants/recipients).
- Other positions for which OPM determines examining is impracticable (Schedule A—5 CFR 213.3102(i)(3))
- Direct Hire Authority (DHA) – new agency specific requests

2. *What does an agency need to do to obtain an agency-specific excepted service Schedule A or B appointing authority?*

The agency head (or designee) must submit a request to OPM with the following information:

- Type and number of the occupation(s) and duties involved;
- Description of why attempts to hold competitive examining did not/could not work;
- Reasons why recruitment and competitive examining are not possible (e.g., emergency situation with immediate hiring need); and
- Other options the agency considered in trying to fill its positions.

Agencies should submit their requests to:

Office of Personnel Management
Strategic Human Resources Policy Division
1900 E Street, NW. – Room 6500
Washington, DC 20415

3. *What does an agency need to do to obtain an agency-specific Direct-Hire Authority (DHA)?*

Requests for DHA must be based on a severe shortage of candidates or a critical hiring need. The information required depends on the basis for the request. The assumption is that most DHA requests resulting from a pandemic health crisis would be based on a critical hiring need.

The agency head (or designee) must submit a request to OPM for a DHA based on a critical hiring need. The following information must be included:

- The position(s) that must be filled;
- A description of the event or circumstance that has created the need to fill the position(s);
- The duration for which the critical need is expected to exist; and
- Supporting evidence that demonstrates why the use of other hiring authorities is impracticable or ineffective.

The agency head (or designee) must submit a request to OPM with the position or positions that are difficult to fill for a DHA based on a severe shortage of candidates. The following information must be included:

- The results of workforce planning and analysis, e.g., the agency's emergency plan for pandemic influenza;
- The existence of nationwide or geographic skill shortages;
- Agency efforts, including recruitment initiatives or use of other appointing authorities and flexibilities, and an explanation of why these efforts have been insufficient;
- The availability and quality of candidates;
- The desirability of the geographic location, duties, and/or work environment associated with the position(s).

Agencies should submit their requests to:

Office of Personnel Management
Strategic Human Resources Policy Division
1900 E Street, NW. – Room 6500
Washington, DC 20415

c. Short-term Hiring

1. *Is there a hiring authority available to immediately fill critical positions in reaction to a pandemic influenza?*

Schedule A (5 CFR 213.3102(i)(2)) may be used without OPM approval to fill critical positions for 30 days. These appointments may be extended for an additional 30 days so agencies can determine their longer-term needs in dealing with pandemic influenza.

2. *If an agency has a significant number of employees out on sick leave, how can the agency backfill the positions of the affected workers until they are able to come back to work?*

Agencies have several flexibilities available when faced with the need to back-fill positions of workers on sick leave. OPM's June 28, 2005, Memorandum for Heads of Executive Departments and Agencies, "HR Flexibilities Available to Assist Federal Employees Affected by Severe Weather Emergencies and Natural Disasters," on OPM's Web site at <http://www.opm.gov/oca/compmemo/2005/2005-13.asp>, provides general information about short-term hiring flexibilities.

d. Issues Affecting Utilizing the Workforce

1. *May an agency relocate employees to different worksites permanently or temporarily to maintain continuity of operations during a pandemic?*

Yes. An agency has the basic right to determine where its work is performed. The agency should determine whether its basic right is modified by its other formal policies or collective bargaining agreement(s). See also, Part III-A –Accomplishing Work During a Pandemic Health Crisis.

2. *During a pandemic health crisis, can OPM waive the prohibition on the employment of relatives (nepotism) when the skills and expertise of an individual could be essential to the agency in accomplishing its mission?*

During an emergency, agencies may hire individuals for up to 30 days (with a 30 day extension if the emergency need continues) without regard to the prohibition on employment of relatives.

3. *If a pandemic health crisis occurs, may agencies have an exception to the 1040-hour time limit for temporary seasonal employees with the skills needed in helping with a critical emergency?*

Yes, OPM may approve agency requests for exceptions to the 1040-hour limitation for seasonal temporary employees in both the excepted and competitive service.

e. Issues Affecting Employees Separating From Agencies

1. *May an agency deny an employee the right to resign or retire optionally if the agency needs the employee as a result of a pandemic health crisis?*

No. An employee is free to resign or retire at any time as well as set the effective date of the resignation or retirement.

2. *During a pandemic, may an agency rescind a buyout or early retirement offer to an employee who has not separated?*

Yes, provided that the agency bases the rescission(s) on legitimate management reasons.

3. *May an agency request a buyout repayment waiver to help cope with the aftermath of a pandemic?*

The head of an agency may ask OPM to waive the usual buyout repayment requirement (5 U.S.C. 3524) if, in the case of an emergency involving a direct threat to life or property, the individual covered by the waiver request has skills directly related to resolving the emergency and will serve on a temporary basis only so long as that individual's services are made necessary by the emergency for buyouts authorized under the Chief Human Capital Officers Act of 2002. See 5 CFR part 576. Contact your Human Resources Office for buyouts authorized under other statutory authority.

f. Issues Affecting Military Reservists and the National Guard

1. *What happens to Reservists and National Guard members returning to work from active duty (through the exercise of restoration rights) when they must do so under specified timelines if Federal agencies must close in a particular geographic area due to a pandemic health crisis?*

Agencies should have contingency plans to restore individuals with restoration rights within required time periods. Once restored, agencies must treat such employees the same as other employees until the situation is resolved.

2. *If the President calls an employee in the Reserves or National Guard to active duty in a uniformed service to assist with a pandemic health crisis, does the employee have restoration rights under the Uniformed Services Employment and Reemployment Rights Act?*

Yes.

g. Issues Affecting Appointments With Conversion Eligibility

1. *What happens to employees serving on excepted service appointments (e.g., Career Interns, Veterans' Recruitment Appointments, Presidential Management Fellows) if the agency is unable to convert the employees to the competitive service because the agency is temporarily shut down or disrupted as a result of a pandemic health crisis? May the employees continue on the excepted appointment even though they have completed program requirements, or must the agency terminate them?*

Agencies should do everything possible to ensure conversions are processed in a timely manner. If conversions cannot be made prior to the expiration date of an appointment, agencies should contact OPM.

2. *Can agencies extend the 120-day period for conversion of Student Career Experience Program (SCEP) employees if the agency is disrupted or shut down and otherwise unable to make conversions within the 120-day timeframe as a result of pandemic health crisis?*

The Executive order governing SCEP appointments does not provide for extending the 120-day period. If conversions cannot be made before the expiration date of an appointment, agencies should contact OPM.

h. Security Clearances and Background Checks

1. *How are security clearances and background checks affected by emergency hiring during a pandemic?*

The requirements for such checks would remain unchanged for emergency hires; however, activities to complete them might vary (e.g., alternatives may be needed for face-to-face interviews with persons affected by a pandemic). Likewise, the requirements for background checks for ID badges (minimum NACI review) for Government building access would apply to emergency hires, as well. As with other temporary appointees, suitability rules would not apply.