

CHAPTER 4

EMPLOYMENT

NOTE: This chapter should be read in conjunction with local activity instructions and with any negotiated agreements between your activity and an exclusively recognized labor organization. Contract language will generally take precedence over conflicting provisions in this manual. Areas of uncertainty should be discussed with the Human Resources Office.

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SECURITY INVESTIGATIONS AND CLEARANCES

1. PURPOSE

This section addresses civilian employees whose work requires access to classified material and is required to have appropriate security clearance. However, the number of personnel shall be kept to a minimum and access limited to a need-to-know basis in order to reduce the possibility of compromise. Employees are required to have only the level of clearance appropriate for the level of security actually required of the position.

2. DEFINITIONS

CRITICAL-SENSITIVE POSITIONS

Includes positions involving any of the following:

- Access to Top secret defense information.
- Development or approval of war plans or particulars of future or major or special operations of war, or critical and extremely important items of war.
- Development or approval of plans, policies or programs which affect the overall operations of an activity.
- Investigative duties, the issuance of personnel security clearances, or duty on personnel security boards.
- Fiduciary, public contact, or other duties demanding the highest degree of public trust.
- Planning, direction and implementation of a computer security program.
- Direction, planning, and design of a computer system, including the hardware and software.
- Access to a computer system during the operation or maintenance in such a way and with relatively high risk for causing grave damage or realize significant gain.

NON-CRITICAL-SENSITIVE POSITIONS

Includes positions involving any of the following:

- Access to Secret or Confidential national security materials or information.
- Direction, planning, design, operation, or maintenance of a computer system, and whose work a higher authority at the Critical-Sensitive level technically reviews to ensure the integrity of the system.

NONSENSITIVE POSITIONS

Any position which does not involve duties and responsibilities categorized as critical-sensitive or non-critical-sensitive.

3. RESPONSIBILITIES



a. Activity Head

- Establish and maintain an effective program to ensure that the employment and retention of any civilian employee within the activity is clearly consistent with the interests of national security.
- Make final activity-level decisions on security.

b. Security Manager

- Administer the activity security program.
- Initiate requests for investigation.
- Make a security determination based on the results of the National Agency Check and Inquiries (NACIs) furnished by HRSC-NW.
- Forward Certificate of Personnel Security Investigation, Clearance and Access form for civilian employees to the Human Resources Service Center for filing in the employee's Official Personnel Folder (OPF).
- Ensure the position sensitivity of all positions reflects access required of the position.

c. HRSC-NW

- Provide all newly appointed employees the NACI investigation form and Standard Form 87 Fingerprint Chart.
- Maintain copy of the DON Central Adjudication Facility (DON CAF) message on the permanent side of the OPF.
- Maintain Certificate of Personnel Security Investigation, Clearance and Access forms on the permanent side of the OPF of each employee for whom the certificate is issued.

d. Supervisor

Indicates the level of clearance appropriate for each position on the position description.

MEDICAL EXAMINATIONS OF CIVILIAN EMPLOYEES

1. PURPOSE

This section describes how to set physical requirements for a position, and when medical examinations are appropriate. Only medical information, which is relevant to an employment decision, e.g., the decision to hire or approve benefits, may be required of employees or applicants. Consult Chapter 16 Employee Assistance Program for fitness for duty examination procedures where there is a reasonable suspicion an employee is under the influence of drugs or alcohol while on duty.

2. DEFINITIONS

ACCOMMODATION

An accommodation is a change in the work environment or in the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunities.

APPELLATE AUTHORITY

The appellate authority is a higher level management official designated by Echelon 1 and 2 Commands to evaluate an individual's request for reconsideration from a denial of an accommodate request.

DECISION-MAKER

The decision-maker is typically an employee's first level supervisor. If the first-level supervisor is unavailable, the next level supervisor or manager in the immediate chain of command is the decision-maker. The HRSC-NW employee identified in the vacancy announcement is typically the decision-maker for an applicant's request for accommodation in the application process. If that individual is unavailable, the first-level supervisor or manager in the immediate chain of command is the decision-maker for a request for accommodation in the application process. HRSC-NW decision-makers for applicants have the same responsibilities as a supervisor decision-maker for employees.

DISABILITY

A person with a disability is one who meets one of the following conditions:

- Has a physical or mental impairment, which substantially limits one or more of such person's major life activities.
- Has a record of such impairment.
- Is regarded as having such an impairment.

ESSENTIAL FUNCTIONS

Job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. Determination of the essential functions must be based on the job as actually performed, not simply the components of a generic position description. Factors to consider include:

- Whether the position exists specifically to perform that function
- Experience of present or past employees in the job

HUMAN RESOURCES MANUAL

- Whether the function requires a degree of specialization or skill and the incumbent was hired based on his/her ability to perform it
- There are a limited number of other employees who could perform the function if it were assigned to them
- Whether a written job description or terms of the collective bargaining agreement define the function as essential
- Whether employees in the same or similar positions spend a significant amount of time performing the function
- Consequences of not performing the function

HEALTH CARE PROVIDER

- **Physician**
A licensed Doctor of Medicine or Doctor of Osteopathy, or a physician serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations.
- **Practitioner**
Any health care provider recognized by the Federal Employees Health Benefits Program or who is licensed or certified under Federal or State law to provide the service in question.

MEDICAL CONDITION

Health impairment which results from injury or disease, including psychiatric disease.

MEDICAL DOCUMENTATION

A written statement from a licensed physician or other appropriate practitioner covering the relevant points listed in Appendix 4A.

MEDICAL STANDARD

An Office of Personnel Management (OPM) approved written description of the medical requirements for a particular occupation on the basis that a certain level of fitness or health status is required for successful performance.

PHYSICAL REQUIREMENT

A written description of job-related physical abilities which are normally considered essential for successful performance in a specific position. These are normally identified on a Standard Form 78 (SF-78)

QUALIFIED INDIVIDUAL WITH A DISABILITY

A qualified individual with a disability is a person who, with or without reasonable accommodation, can perform the essential functions of the position. A disabled employee is not "qualified" for a position if s/he would pose a direct threat to his or her own safety or health, or that of others when working in that position.

REASONABLE ACCOMMODATION

There are three categories of reasonable accommodations:

- Modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job (such as providing application forms in alternative formats like large print or Braille)
- Modifications or adjustments necessary to enable a qualified individual with a disability to perform the essential functions of the job (such as providing sign language interpreters, or reassignment)
- Modifications or adjustments that enable individuals with disabilities to enjoy the benefits and privileges of the workplace afforded to all individuals (such as removing physical barriers in an office cafeteria).

UNDUE HARDSHIP

A specific accommodation that would require significant difficulty, expense, or would cause a significant disruption to another employee's ability to work or to the operations of business.

3. ESTABLISHING MEDICAL STANDARDS AND PHYSICAL REQUIREMENTS

a. Basic Federal Employment Premise

Employees possess the physical abilities necessary to perform their jobs safely and efficiently. Most occupations do not have established medical standards beyond a general requirement that employees be capable of carrying out the essential functions of their positions, with or without reasonable accommodation, without hazard to themselves or others.

b. Establishing Medical Standards

OPM has set specific job-related medical standards for certain occupations where the job duties are arduous or hazardous, require a certain level of health or fitness, or involve sensitive national security concerns. These occupations include, but are not limited to, Wage Grade Occupations, Fire Fighters, Correctional Officers, and Air Traffic Controllers. OPM-approved medical standards are published in qualifications handbooks that are located in HRO or can be found on the OPM web site at www.OPM.gov.

c. Establishing Physical Requirements

In some cases, the OPM-established occupation-wide standards may not address the physical demands of a given position. Specific physical requirements may exist either because of environmental factors (e.g., working in confined spaces, extreme heat, etc.) or because of unusual physical demands (e.g., lifting, climbing, bending, etc.). Supervisors may establish pertinent physical requirements for these positions without OPM approval, e.g., ability to lift 50 pounds. These requirements should be documented in the position description.

d. Physical Requirements as Selective Factors

Physical requirements established by the supervisor and OPM become selective factors; i.e. inability to meet the physical requirements may serve as a basis for non-selection, reassignment, or other personnel action. Candidates may be required to demonstrate their ability to meet any established physical requirements through satisfactory performance of a real or simulated physical task, through evidence of prior demonstration of performance, or through other means acceptable to the agency. Such

physical demonstrations must be directly related to the essential functions of the position, be uniformly applied to all similarly qualified applicants, and must not exceed those required in actual job performance.

4. RESPONSIBILITIES



a. Activity Heads

- Employees are physically and medically qualified for the positions they hold.
- Policies and practices established by the activity are fully consistent with the OPM and the Equal Employment Opportunity Commission (EEOC) regulations and instructions.

b. Managers/Supervisors

- Establishing job-related physical requirements for individual positions where warranted.
- Ordering or offering medical evaluations of employees, when appropriate.
- Making selection or retention decisions and decisions on requested benefits for employees from medical information.

c. Employees and Employment Applicants

- Responsible for demonstrating that they are able to meet the physical requirements of the position to which appointed.
- When health status becomes a potential issue that may affect an employee's performance or conduct, the employee is responsible for providing relevant medical information to support a request for change in duty status or working conditions, reasonable accommodation, leave requests, or other benefits.

5. MEDICAL EXAMINATION AUTHORITY

a. Ordered examinations

Required by management in specific circumstances, as listed below. The activity will select the examining physician but will permit the employee to submit medical evidence from their personal physician. There will be no cost to the employee for a directed examination. Administrative leave is authorized for examinations required by the activity.

1) Positions with Medical Standards

Employees in positions with established medical standards might be ordered to undergo a medical examination. Examinations may be ordered for both appointment and for retention in the position. If the position is included in an established program of medical surveillance related to occupational or environmental exposure or demands, an employee occupying that position may be required to undergo a medical examination. Such examinations may be required prior to appointment or selection, on a regularly recurring periodic basis, and whenever there is a direct question about the employee's ability to meet the physical or medical requirements of the position.

2) Job-related Injuries

Medical examinations may be ordered in connection with workers' compensation claims. An individual who has applied for or is receiving continuation of pay or compensation as a result of an on-the-job injury or disease may be ordered to report for an examination to determine medical limitations that may affect placement decisions. If the activity has identified an assignment (including a light duty assignment) or a position (including the employee's regular position) which it believes the employee can perform consistent with the medical limitations arising from an on-the-job injury, the activity may order the employee to submit to a medical examination. For additional information see the Injury Compensation Program section in Chapter 13.

3) Reduction in Force (RIF)

Activities may order an employee released from a position in a RIF to undergo medical evaluation if the employee has reassignment rights to a position requiring specific physical capabilities different from the requirements in the employee's present position.

4) Psychiatric Exams

Activities may order a psychiatric examination or psychological assessment only when one of the conditions below exists:

- a)** The results of a current general medical examination which the agency has the authority to require under this section show no physical basis to explain actions or behavior which may affect the safe and efficient work performance of the individual or others
- b)** A psychiatric examination is specifically required by medical standards. An authorized physician or licensed practitioner must conduct the psychiatric examination or psychological assessment in accordance with accepted professional standards.

b. Offered Examinations

An activity may offer a medical examination (including a psychiatric evaluation or psychological assessment), or it may ask the employee to submit medical documentation in any situation where it is in the interest of the Government to obtain medical information relevant to an individual's ability to perform safely and efficiently, or where the employee has requested a change in duty status, assignment, working condition, or any other benefit or special treatment (including reasonable accommodation or reemployment on the basis of full or partial recovery from a medical condition). The supervisor bears the obligation to consider this documentation in determining whether to grant or deny the request. Only after determining that the medical documentation submitted by the employee is inconclusive should the activity consider offering a medical examination. Appendix 4A lists the points, which should be covered in a medical report. If the individual refuses to be examined or to submit medical documentation, the activity should act on the basis of the information it has available, e.g., the activity may refuse a requested benefit if not supported by adequate medical documentation, or take adverse action based on the employee's performance or conduct. If an employee claims that the unacceptable performance results from a medical condition, the activity is required to consider any such medical information provided. The burden is on the employee to demonstrate a medical condition to prove the claim. If the submitted medical documentation is inconclusive, the activity may offer a medical examination to the employee.

6. MEDICAL EXAMINATION PROCEDURES

- a. When an activity orders or offers a medical examination, the applicant or employee shall be advised in writing of the reasons for ordering or offering the examination, the consequences of failure to cooperate, the right to submit medical information from a personal physician or practitioner, and the activity's obligation to consider such information.
- b. The activity has the authority to designate the examining physician or other practitioner. The physician could be a medical officer or a civilian physician employed by the activity or available from a naval medical facility. It may also include designating the applicant or employee's treating physician to conduct the examination. Often the treating physician is in the best position to render an opinion as to an individual's ability to perform certain tasks, since that physician has been following the individual over a period of time. The activity must pay for all activity ordered or offered examinations performed by private physicians.
- c. The examining physician will be provided copies of the position description, the medical requirements (SF-78) and any other pertinent information directly related to determining the individual's ability to perform. The physician will also be provided a copy of Appendix 4A.

7. USE OF MEDICAL INFORMATION IN MAKING EMPLOYMENT DECISIONS

a. **Employability Decisions**

Must be made by management. Managers should not ask physicians to make employment decisions. The role of the examining physician or practitioner with respect to employment decisions is limited to determining whether the individual meets the medical requirements of the position, whether medical problems are caused by the job, and the prognosis of the condition. In some cases, the activity may wish to ask the physician's opinion about a possible accommodation suggested by the employee or the activity.

- b. **Activities should avoid using medical examinations** as a way of addressing underlying misconduct, performance, or leave problems. These issues must be dealt with on their own merits and activities should take action based on the specific nature of the problem, in accordance with regulations.

PROBATIONARY PERIODS

1. PURPOSE

The probationary period provides the test of actual performance on the job, which no preliminary testing method can validate. This section discusses probationary period following appointment to a civil service position and to the first year of assignment to a supervisory or managerial position.

2. PROBATION ON INITIAL APPOINTMENT TO FEDERAL SERVICE

a. When Served

An individual given a permanent appointment from an OPM or open competitive certificate of eligible candidates (recruitments that are open to the general public) must serve a probationary period of one year. This applies not only to a first appointment, but also usually to any subsequent appointment from an OPM or open competitive certificate, despite a previously completed probationary period. The employee's conduct and performance deficiencies may constitute a basis for separation without undue formality.

b. Interrupted Probationary Period

An employee who leaves the federal government before completing the one year probationary period and is later re-hired, is normally required to serve a new probationary period of one year beginning on the date of reinstatement. An employee who is promoted, demoted, reassigned or transferred before completing a probationary period is subject to satisfactory completion of the remainder of the probationary period in the new position.

c. Separation of Probationers for Unsatisfactory Performance or Conduct After Appointment

The probationary period provides a first hand opportunity to judge employee conduct and performance in the actual duties of the position. Termination action should be started if, after a full and fair trial, the employee's work performance or conduct fails to demonstrate fitness or qualifications for continued federal employment. Supervisors should avoid waiting until the last possible day to inform a probationer of impending separation. If the employee's performance or conduct is poor, early contact should be made with the HRO. Proper documentation of incidents, poor performance or improper conduct is crucial. In cases where termination is desirable, HRO will assist with the preparation of documents.

d. Separation of Probationers for Conduct Before Appointment

If information of a derogatory nature is discovered about employees after they report for work, termination action is appropriate if this information would have impacted on their selection.

3. PROBATION ON INITIAL APPOINTMENT TO A SUPERVISORY OR MANAGERIAL POSITION

a. Probation for New Supervisors

Newly selected supervisors who are in their first civilian supervisory position are subject to a probationary or trial period usually of one year. The appointment document (RPA) will show whether the supervisory probationary period applies. Failure to satisfactorily complete the period can result in return of the employee to the former (or equivalent) position.

b. Probation for New Managers

An individual serving in an initial managerial position must serve a one-year managerial probationary period. If the employee has already completed a one-year supervisory probationary period, the employee may be exempt.

c. Exemptions to Probationary Periods for Supervisors or Managers

Employees who previously completed a probationary period as a supervisor or manager may not be required to serve another.

d. Removal of an Employee from a Managerial or Supervisory Position During Probation

If an employee's performance is unsuitable, the employee must be returned or reassigned to a non-supervisory or non-managerial position of a grade no lower than the position from which the individual was reassigned or promoted. This does not apply to situations where only the technical work (i.e., duties that are not supervisory or managerial) is unsatisfactory. The employee must be informed of unsatisfactory performance before completing the probationary period.

- 1) The employee's immediate supervisor or higher level authority is the official who decides to return an employee to a non-supervisory or non-managerial position. An employee may be returned at any time during the probationary period when an evaluation discloses supervisory deficiencies. However, probationers must be given a full and fair trial period and evaluation. Returning an employee to a non-supervisory or non-managerial position under the provisions of this section is not grievable.
- 2) Any decision to remove an employee from a supervisory or managerial position should be coordinated well in advance with HRO.

4. PROBATIONARY PERIOD CERTIFICATION

Prior to the end of the probationary period, the HRSC-NW furnishes a certification form to the probationer's supervisor. The supervisor must certify that the employee is performing satisfactorily and return the form to the HRSC-NW for action. If employee performance or conduct is not satisfactory, the supervisor should **contact HRO** for assistance.



APPENDIX 4A MEDICAL DOCUMENTATION

The following points are to be covered in a report of medical evaluation:

1. **History** of the specific medical conditions, including references to findings from previous examinations, treatment and responses to treatment.
2. **Clinical findings** from the most recent medical evaluation, including any of the following which have been obtained: findings of physical examinations, results of laboratory tests, x-rays, EKG's, and other special evaluations or diagnostic procedures, and, in the case of psychiatric evaluation or psychological assessment, the findings of a mental status examination and the results of psychological tests, if appropriate.
3. **Diagnosis**, including current clinical status.
4. **Prognosis**, including plans for future treatment, and an estimate of the expected date of full or partial recovery.
5. **Explanation of the impact** of the medical condition on overall health and activities, including the basis for any conclusion as to whether restrictions or accommodations are warranted and, if warranted, an explanation of their therapeutic or risk-avoiding value.
6. **Explanation of the medical basis** for concluding likelihood that the individual is or is not expected to suffer sudden or subtle incapacitation by carrying out, with or without accommodation, the tasks or duties of a specific position.
7. **Narrative explanation of the medical basis** for any conclusion that the medical condition has or has not become static or well stabilized and the likelihood that the individual may experience sudden or subtle incapacitation as a result of the medical condition. In this context, "static or well stabilized medical condition" means a medical condition which is not likely to change as a consequence of the natural progression of the condition, specifically as a result of the normal aging process, or in response to the work environment or the work itself. "Subtle incapacitation" means gradual, initially imperceptible impairment of physical or mental function, whether reversible or not, which is likely to result in performance or conduct deficiencies. "Sudden incapacitation" means abrupt onset of loss of control of physical or mental function.
8. **Psychiatric examinations** (including psychological assessments) will be required only when one of the following conditions exist:
 - a. The results of a current general medical examination, which the activity has the authority to order, indicate no physical explanation for behavior or actions, which may affect the safe and efficient performance of the individual or others.
 - b. Such examination is specifically called for in a position having medical standards or which is subject to a medical evaluation program. Psychiatric examinations may be offered in any situation where the activity needs additional medical documentation to make an informed management decision. Reasons for offering an examination must be documented. Psychiatric examinations must be limited to a legitimate inquiry into a person's mental fitness to successfully perform the duties of the position.

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