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Forest Service Council

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Temporary Employment Reform: Building a Path to Permanence¹

The Case for Reform

The Merit System Protection Board (MSPB) declared in 1994, “temporary employment policy should be based on the assumption that the employment will normally be on a one-time, short-duration basis. To proceed on any other basis would serve to create a permanent underclass in the federal workforce...”² That prediction has come true for seasonal workers in land management agencies. Regulations promulgated in 1994 and still in place put “no limit on the number of extensions or noncompetitive reappointments, as long as the [temporary] employees [are] paid for less than 1,040 hours (6 months) each year.”³ Temporary employees receive no health insurance benefits, no life insurance benefits, no retirement benefits, no step increases, and no competitive standing for internal placement into career jobs.

The Forest Service hires 10,000 to 15,000 temporary employees each season. During the field season, temporary employees represent over 30% of the total workforce. The National Park Service employs a similar percentage of seasonal temporary employees. They are the “boots on the ground” that land management agencies depend on to get the job done, season after season, in some cases for decades. Thousands come back to the same job season after season, some for decades.

For example, Joe Katz, of Dover, Idaho is a Marine who served his country honorably in Vietnam. He began working for the Forest Service in 1975. His current position is in trails and recreation, a position he has held for 21 of the past 22 seasons – under a string of temporary appointments. Lisa McKinney began working for the Forest Service as a firefighter in 1978. She has been performing the same kind of work on a timber crew since 1995, for the last 14 years as a certified timber cruiser.⁴

This work is regular and recurring; it is not temporary. Falsely categorizing it as temporary masks huge retention problems. While there are many like Joe and Lisa, most temporary employees leave these dead end jobs after 3 or fewer years of service. They need a job with benefits to support their families. High turnover means high costs and low efficiency. Training and administrative costs are substantial; field capacity and safety are compromised. This doesn't just exploit the rural Americans stuck in these dead-end jobs; it is also a bad deal for the American taxpayer.

A career seasonal hiring authority is available. It provides benefits during the work season. Career seasonal employment, as noted at 5 CFR 340.402, “allows an agency to develop an experienced cadre of employees under career appointment to perform work which recurs predictably year-to-year.” However, a career position is beyond the reach of many long-term temporary employees. An agency may determine that the job should be converted to career status and the expertise of the incumbent temporary employee may be sorely needed, but “legal and procedural barriers... often preclude the consideration of many temporary employees for permanent positions regardless of how well they have performed.”⁵ The current statutory and regulatory framework does not even acknowledge, much less deal with, the existence of this “permanent underclass” of employees.

Legislative Proposal for a Path to Permanence

The National Federation of Federal Employees (NFFE) Forest Service Council respectfully submits a legislative proposal that would (1) grant competitive standing to long-term temporary employees so they can compete for career jobs under merit promotion procedures like any other federal employee and (2) authorize land management agencies to convert long-term temporary employees into permanent positions (seasonal or full time, as appropriate) if there is a permanent need for the work they perform. Our legislative proposal is modeled on similar authorities already in place for the Internal Revenue Service and the National Aeronautics and Space Administration.⁶ Section

Congressional Briefing, May 14, 2012. For more information, contact Mark Davis, President, NFFE Forest Service Council, at 920-992-6208 or mwdavis01@fs.fed.us.

9601 defines the scope of the proposal and clarifies authorities. The scope is limited to land management agencies where seasonal employment is a major and unique aspect of agency operations. The Office of Personnel Management is responsible for regulations pertaining to the various employment authorities; however, deference is given to the expertise of the agencies in determining the length of the season.

Subsection 9602(a) authorizes a covered agency to use internal competitive promotion procedures to select employees who have 24 or more months of service in time-limited appointments in that agency. This period of service is consistent with the limit placed on temporary employment for all cases except seasonal or intermittent employment. It is also consistent with the probationary period for employees appointed without competition to the excepted service. By this time, a temporary employee has either proven his/her worth or has not been hired back.

Subsection 9602(b) provides for the direct conversion of a temporary employee with 24 or more months of service in the same time-limited job to career conditional status if his/her job is converted to a career position (*i.e.*, if a new career position is created with the same duties and located in the same major subdivision of the same agency as the time-limited job). The limited scope of this direct-conversion authority is consistent with guidance offered by the Merit System Protection Board.⁷ If two or more temporary employees are eligible for placement, the subsection provides that preference eligible veterans shall have priority.

This proposal does not mandate any conversions of jobs from temporary to career status; this is left to the agencies to determine as part of their normal workforce planning activities. It has no direct costs. Further, because administration of seasonal temporary employment already requires the tracking of temporary service time, it would not impose any significant new administrative costs. It simply gives land management agencies an important new tool with which to meet the unique needs of their workforces: the authority to retain the services of long-term temporary employees when warranted. The proposal is attached.⁸

Notes

¹ For employee comments, the history of previous reform efforts, employee survey results, and Congressional testimony on the issue, see:

- http://www.nffe-fsc.org/committees/legislative/temps/Employee_Comments.pdf
- http://www.nffe-fsc.org/committees/legislative/temps/Reform_History.pdf
- http://www.nffe-fsc.org/committees/legislative/temps/Survey_Results.pdf
- http://www.nffe-fsc.org/committees/legislative/100630_Statement_Temp_Reform.pdf

² See MSPB, “Temporary Federal Employment: In Search of Flexibility and Fairness,” (Sept. 1994) at 27. (http://www.nffe-fsc.org/committees/legislative/temps/MSPB_9409_TempRpt.pdf)

³ See 59 Federal Register, “Temporary and Excepted Service Employment: Proposed Regulations” (Feb. 1, 1994). (<http://frwebgate3.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAISdocID=0890385616+0+1+0&WAIAction=retrieve>) See 59 Federal Register 46897 (<http://www.gpo.gov/fdsys/pkg/FR-1994-09-13/html/94-22447.htm>) for the final regulations, which did not differ in this regard.

⁴ See “Permanent Fix,” Elizabeth Newell, Government Executive, August 1, 2010 (<http://www.govexec.com/features/0810-01/0810-01na1.htm>) and Statement of William R. Dougan, President of the National Federation of Federal Employees, before the House Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia regarding Temporary Employment Practices (June 30, 2010) (http://www.nffe-fsc.org/committees/legislative/100630_Statement_Temp_Reform.pdf).

⁵ See “Temporary Federal Employment: In Search of Flexibility and Fairness,” *supra* note 2, at 8.

⁶ The cited authorities reside at 5 USC 9510 and 5 USC 9806, respectively.

⁷ See “Temporary Federal Employment: In Search of Flexibility and Fairness,” *supra* note 2, at 17, which states, “conversions of temporary employees to permanent status should be limited to those temporary employees placed in permanent positions closely related in their duties and organization location (e.g., a particular work unit) to those held by the employees under temporary appointment.”

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⁸ The proposal calls for amending Title 5, United States Code, by adding the following new chapter 96 as follows:

Chapter 96. Personnel Flexibilities Relating to Land Management Agencies

Sec. 9601. Appropriate Use of Temporary Employment Authorities

(a) Definition – For purposes of this chapter, the term “land management agency” means the following agencies: the Forest Service, Park Service, Bureau of Land Management, Fish and Wildlife Service, Bureau of Indian Affairs, and Bureau of Reclamation.

(b) Land management agencies may use time-limited or career appointments for seasonal work as authorized and regulated by the Office. The agencies determine the length of the season, subject to the condition that it be clearly tied to the nature of the work.

Sec. 9602. Competitive service; time-limited appointments.

(a) Internal competitive status of certain employees in time-limited appointments – Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, an employee of a land management agency serving under a time-limited appointment in the competitive or excepted service is eligible to compete and be selected for a career appointment in the competitive or excepted service, respectively, under that agency’s internal competitive promotion procedures if –

(1) the announcement for the time-limited appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment or the employee’s initial appointment to a time-limited appointment occurred prior to the effective date of this Act;

(2) the employee's performance under such time-limited appointment or appointments has not been rated below fully successful; and

(3) the employee has served under a time-limited appointment or appointments for a period or periods totaling not less than 24 months without an intervening break of two or more years.

(b) Conversion of employees in time-limited appointments to career conditional status

(1) For purposes of this subsection, the term “successor career position” means, with respect to a time-limited position, a newly created career position in the competitive service with the same or substantially similar major duties and qualification requirements in the same major subdivision of the same agency as the time-limited position.

(2) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, an employee of a land management agency serving under a time-limited appointment in the competitive service shall be

offered, without further competition, any successor career position that the agency decides to fill and, upon his or her concurrence, be appointed to said position if the conditions under paragraphs (1) and (2) of subsection (a) are met and –

(i) such individual was appointed under open, competitive examination under subchapter I of chapter 33 to the time-limited position; and

(ii) the employee has served under a time-limited appointment or appointments in a position or positions with the same or substantially similar major duties and qualification requirements as the successor career position for a period or periods totaling not less than 24 months without an intervening break of two or more years.

(3) If two or more employees are eligible for conversion under this subsection, then any preference eligible veterans shall be given priority.

(4) If two or more employees have equal priority for conversion under this subsection, then placement shall be determined by competitive procedures consistent with merit system principles.

(c) An employee selected or converted under this section becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure.

(d) An employee selected or converted to career-conditional employment under this section acquires full competitive status upon selection or conversion.

(e) The provisions of this section shall apply with respect to time-limited employees who have been separated for reasons other than misconduct or unacceptable performance for two years following their separation.

(f) For purposes of this section, time-limited appointments include temporary appointments and term appointments, as defined by the Office.

(g) The Office shall prescribe such regulations as may be necessary to carry out this section.