



NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Affiliated with the International Association of Machinists & Aerospace Workers, AFL-CIO

NFFE Guidance: What to do if you receive a termination letter while on probation

1. **Contact your union steward.** Your steward will help you decide if your rights were violated.
2. **Know your rights.** An employer may terminate an individual during his probationary period if the individual 'fails to demonstrate his fitness or his qualifications for continued employment....' [5 C.F.R. 315.804](#) § (a). Employees who 'pass probation' acquire Board adverse action appeal rights to the Merit System Protection board and earn substantive and procedural protections within the Statute and in the Collective Bargaining Agreement.

Employees in the competitive service have limited appeal rights that excepted service employees don't have. [5 CFR 315.805](#) and [5 CFR 315.806](#) (c) provide certain appeal rights to employees in the competitive service only concerning terminations for pre-appointment reasons and terminations based on marital status or partisan political reasons. Employees in the competitive service may be able to file a grievance on their termination while on probation depending on how the collective bargaining agreement is written.

All federal employees, including excepted service employees, may choose instead to challenge their terminations while on probation by filing prohibited personnel practice complaints with the Office of Special Counsel, EEO complaints, or appellate procedures used to challenge discrimination based on past or present military service.

3. **Make sure the Agency calculated your probationary status correctly.** If you have prior federal service, you may become an employee with full due process and appeal rights even though you're technically still serving a probationary period. Your steward can help you figure out if the agency correctly determined your status. This determination is made differently depending on whether your job is in the excepted service or the competitive service. For excepted service employees, the determining factor is whether the individual is non-preference eligible or preference eligible. For example, a non-preference eligible excepted service employee can tack their prior service toward the completion of a probationary period or trial period where: 1) the prior service was performed in the same agency; 2) it was performed in the same line of work; and 3) it was completed with no more than one break in service of fewer than 30 days. Veterans in the excepted service are covered by the same regulations as the competitive service with respect to tacking; those considerations are set forth in 5 CFR 315.802(b).
4. **If you want to challenge, choose a venue.** In the majority of situations, you may not challenge your termination in more than one venue. If you are excepted service, OSC or EEO procedures may be all that is available to you.
5. **Do you believe your termination was made for partisan political reasons?** Competitive Service employees may file a grievance whereas Excepted service employees may file a complaint with the Office of Special Counsel. Your union steward has a template you can use for either action. We do not recommend an appeal to MSPB.