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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 regular and recurring work on a timber crew since 1995, for the last 14 years as a certified timber cruiser.

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. The inaccurate categorization of this regular and recurring seasonal work as “temporary” masks huge retention problems. Training and administrative costs are substantial; field capacity and safety are compromised.

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.”⁴ 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

Our legislative proposal is modeled on similar authorities already in place for the Internal Revenue Service and the National Aeronautics and Space Administration.⁵ Section 9601 defines the scope of the

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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 and 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 to career status of a temporary employee with 24 or more months of service in the same time-limited job, but only when the career job has the same duties and is located in the same major subdivision of the agency within which the temporary service occurred. The limited scope of this direct conversion authority is consistent with guidance offered by the Merit System Protection Board.⁶ 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.

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

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

⁶ See “Temporary Federal Employment: In Search of Flexibility and Fairness,” *supra* note 2, at 17, wherein is stated “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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