

Veterans' Rights in the Event of a Furlough

See 5 CFR 351.501(c) and (d)

351.501

Order of retention—competitive service.

(a) Competing employees shall be classified on a retention register on the basis of their tenure of employment, veteran preference, length of service, and performance in descending order as follows:

- (1) By tenure group I, group II, group III; and
- (2) Within each group by veteran preference subgroup AD, subgroup A, subgroup B; and
- (3) Within each subgroup by years of service as augmented by credit for performance under § [351.504](#), beginning with the earliest service date.

(b) Groups are defined as follows:

(1) Group I includes each career employee who is not serving a probationary period. (A supervisory or managerial employee serving a probationary period required by subpart I of part [315 of this title](#) is in group I if the employee is otherwise eligible to be included in this group.)

The following employees are in group I as soon as the employee completes any required probationary period for initial appointment:

- (i) An employee for whom substantial evidence exists of eligibility to immediately acquire status and career tenure, and whose case is pending final resolution by OPM (including cases under Executive Order 10826 to correct certain administrative errors);
- (ii) An employee who acquires competitive status and satisfies the service requirement for career tenure when the employee's position is brought into the competitive service;
- (iii) An administrative law judge;
- (iv) An employee appointed under [5 U.S.C. 3104](#), which provides for the employment of specially qualified scientific or professional personnel, or a similar authority; and
- (v) An employee who acquires status under [5 U.S.C. 3304\(c\)](#) on transfer to the competitive service from the legislative or judicial branches of the Federal Government.

(2) Group II includes each career-conditional employee, and each employee serving a probationary period under subpart H of part [315 of this chapter](#). (A supervisory or managerial employee serving a probationary period required by subpart I of part [315 of this title](#) is in group II if the employee has not completed a probationary period under subpart H of part [315 of this title](#).) Group II also includes an employee when substantial evidence exists of the employee's eligibility to immediately acquire status and career-conditional tenure, and the employee's case is pending final resolution by OPM (including cases under Executive Order 10826 to correct certain administrative errors).

(3) Group III includes all employees serving under indefinite appointments, temporary appointments pending establishment of a register, status quo appointments, term appointments, and any other nonstatus nontemporary appointments which meet the definition of provisional appointments contained in §§ [316.401](#) and [316.403](#) of this chapter.

(c) Subgroups are defined as follows:

- (1) Subgroup AD includes each preference eligible employee who has a compensable service-connected disability of 30 percent or more.
- (2) Subgroup A includes each preference eligible employee not included in subgroup AD.
- (3) Subgroup B includes each nonpreference eligible employee.

(d) A retired member of a uniformed service is considered a preference eligible under this part only if the member meets at least one of the conditions of the following paragraphs (d)(1), (2), or (3) of this section, except as limited by paragraph (d)(4) or (d)(5):

- (1)** The employee's military retirement is based on disability that either:
 - (i)** Resulted from injury or disease received in the line of duty as a direct result of armed conflict; or
 - (ii)** Was caused by an instrumentality of war incurred in the line of duty during a period of war as defined by sections 101 and 301 of title 38, United States Code.
- (2)** The employee's retired pay from a uniformed service is not based upon 20 or more years of full-time active service, regardless of when performed but not including periods of active duty for training.
- (3)** The employee has been continuously employed in a position covered by this part since November 30, 1964, without a break in service of more than 30 days.
- (4)** An employee retired at the rank of major or above (or equivalent) is considered a preference eligible under this part if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code, and meets one of the conditions covered in paragraph (d)(1), (2), or (3) of this section.
- (5)** An employee who is eligible for retired pay under chapter 67 of title 10, United States Code, and who retired at the rank of major or above (or equivalent) is considered a preference eligible under this part at age 60, only if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code.

Also, you may want to look at **5 U.S.C. 2108** for statutory definitions for “veteran”; “disabled veteran”; and “preference eligible”.

Look to **FPM 211** for info on determining an employee’s eligibility for veteran preference.

See **5 U.S.C. 3501-3504** for Retention Preference.

And, **FPM Supplement 351-1, S3-7, Sept 18, 1989**, Veteran preference subgroups for eligibility for retention preference for retired members of uniformed service.

Order of furlough, if references are right, says employee may be let go into this order:

- 1st Volunteers
- 2nd Trainees
- 3rd Employees by SCD
- 4th Veterans (?) reference needed (A little HR help here?)

Those barred from being furloughed are those within six months of retirement (see 14 FLRA 243 (1984) (Provision 5)).

Another section comes from the Vet Guide <http://www.opm.gov/policy-data-oversight/veterans-services/vet-guide/>

Adverse Actions

Preference eligibles have protections against adverse actions, including demotion, suspension for more than 14 days, **furlough for 30 days or less**, and removal. These protections include advance notice, a reasonable time to respond, representation by an attorney or other person, a final written decision, and an appeal right to the Merit Systems Protection Board.

The law provides adverse action rights to preference eligibles of any rank who are:

- under career or career-conditional appointment and not serving probation.
- under competitive service appointments other than a temporary appointment not to exceed 1 year or less and who have completed 1 year of continuous service.
- under excepted appointment in an executive agency, the U.S. Postal Service or the Postal Rate Commission and who have completed 1 year of current continuous service in the same or similar positions. Because the law also exempts certain categories of excepted employees, it is always necessary to check the law in specific cases.

5 U.S.C. 2108 (4) chapters 43 and 75; 5 CFR Parts 432 and 752