

Department of Justice may appear on behalf of, and act as attorney for, the complainant, and commence an action for appropriate relief, or the individual may commence an action on his or her own behalf in the appropriate Federal district court.

b. The district court hearing the complaint can require the employer to:

- (1) Comply with the law;
- (2) Compensate the person for any loss of wages or benefits suffered; and
- (3) If the court determines that the employer willfully failed to comply with the law, pay the person an amount equal to the amount of lost wages or benefits as liquidated damages.

c. A person may file a private suit against an employer without the Secretary of Labor's assistance if he or she:

- (1) Has chosen not to seek the Secretary's assistance;
- (2) Has chosen not to request that the Secretary refer the complaint to the Department of Justice; or
- (3) Has refused the Department of Justice's representation of his or her complaint.

d. No fees or court costs shall be charged or taxed against any person filing a claim. The court may award the person who prevails reasonable attorney fees, expert witness fees, and other litigation expenses.

2. Federal Government as the Employer.

a. The same general enforcement procedures established for private employers are applied to Federal Executive Agencies as an employer; however, if unable to resolve the complaint, the Secretary of Labor shall refer the complaint to the Office of Special Counsel, which shall represent the individual in a hearing before the Merit Systems Protection Board if reasonably satisfied that the individual is entitled to the rights and benefits sought. The claimant also has the option of directly filing a complaint with the Merit Systems Protection Board on his or her own behalf.

b. A person who is adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may petition the United States Court of Appeals for the Federal Circuit to review the final order or decision.

3. Federal Intelligence Agency as the Employer. An individual employed by a Federal Intelligence Agency listed in subparagraph I.1. of this appendix, may submit a claim to the inspector general of the agency.

APPENDIX B TO PART 104—SAMPLE EMPLOYER NOTIFICATION OF UNIFORMED SERVICE

This is to inform you that (insert applicant or Service member's name) must report for military training or duty on (insert date). My last period of work will be on (insert date), which will allow me sufficient time to

report for military duty. I will be absent from my position of civilian employment for approximately (enter expected duration of duty as specified on your orders, and include the applicable period you have to return or submit notification of your return to work) while performing military training or duty unless extended by competent military authority or delayed by circumstances beyond my control. I otherwise expect to return to work on (insert date).

Signature and date

Employer acknowledgment and date

PART 105—EMPLOYMENT AND VOLUNTEER WORK OF SPOUSES OF MILITARY PERSONNEL

Sec.

- 105.1 Purpose.
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AUTHORITY: 10 U.S.C. 113 note.

SOURCE: 53 FR 15205, Apr. 28, 1988, unless otherwise noted.

§105.1 Purpose.

This part implements Pub. L. 100-180 and reissues Secretary of Defense Memorandum for Secretaries of the Military Departments, "Employment of Spouses of Members of the Armed Forces," October 22, 1987 and Secretary of Defense Memorandum for Secretaries of the Military Departments, "Employment of Spouses of Members of the Armed Forces," December 30, 1987.

§105.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments (including their National Guard and Reserve components), the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to as "DoD Components").

§105.3 Definitions.

DoD official. Any commander, supervisor, or other military or civilian official of a DoD Component.

Marital status. Married, single, divorced, widowed, or separated.

Military Services. The Army, Navy, Air Force, Marine Corps, and Coast Guard (when operating as a part of the Navy).

Spouse. The husband or wife of a military member, if such spouse is not also a military member.

§ 105.4 Policy.

(a) No DoD official shall, directly or indirectly, impede or otherwise interfere with the right of a spouse of a military member to pursue and hold a job, attend school, or perform volunteer services on or off a military installation. Moreover, no DoD official shall use the preferences or requirements of a DoD Component to influence, or attempt to influence, the employment, educational, or volunteer service decisions of a spouse. Neither such decision of a spouse, nor the marital status of the member, shall affect, favorably or adversely, the performance appraisals or assignment and promotion opportunities of the member, subject to the clarification in paragraph (b)(2) of this section.

(b) *In furtherance of this policy.* (1) In discharging their responsibilities, members of military promotion, continuation, and similar personnel selection boards are prohibited from considering the marital status of a military member, or the employment, educational, or volunteer service activities of a member's spouse.

(2) Personnel decisions, including those related to the assignments of military members, shall not be affected, favorably or adversely, by the employment, educational, or volunteer service activities of a member's spouse, or solely by reason of a member's marital status, subject to the following clarification:

(i) When necessary to ameliorate the personal hardship of a member or spouse upon the request of the member concerned, such as when a family member requires specialized medical treatment, educational provisions under DoD Instruction 1342.12¹ and Pub. L.

¹Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120.

94-142, or similar personal preference accommodations.

(ii) To facilitate the assignment of dual-career military married couples to the same geographic area.

(iii) When otherwise required by law, such as instances in which a prohibited conflict of interest may exist between the official duties of a military member and the employment of the member's spouse.

(iv) When the Assistant Secretary of Defense (Force Management and Personnel), with the concurrence of the General Counsel, determines, on a case-by-case basis, for reasons of national security, that marital status is an essential assignment qualification for particular military billets or positions.

(3) Performance appraisals on members of the Military Services, including officer and enlisted efficiency or fitness reports, shall not contain any information regarding the employment, educational, or volunteer service activities of the member's spouse, or reflect favorably or adversely on the member based solely on the member's marital status.

§ 105.5 Responsibilities.

(a) The Secretaries of the Military Departments and the Heads of other DoD Components shall ensure compliance with this part.

(b) The Secretaries of the Military Departments shall issue regulations, enforceable under the Uniform Code of Military Justice (UCMJ), and appropriate regulations or other guidance applicable to civilian personnel, implementing this part.

(c) The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall monitor compliance with this part.

§ 105.6 Effective date and implementation.

This part is effective February 10, 1988. The Secretaries of the Military Departments shall forward two copies of implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 60 days.