

§ 352.704

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(3) An employee serving under a career appointment in the Senior Executive Service (SES) who is not serving a probationary period.

(b) *Employees not entitled.* The following employees are not entitled to reemployment rights under this subpart:

(1) An employee who has received a notice of involuntary separation because of reduction in force, or other cause, not directly related to contracting under the Act to a tribal organization;

(2) An employee whose resignation has been accepted for reasons other than to accept tribal employment under this subpart; or

(3) An employee serving under a Schedule C excepted appointment.

(c) *Not related to other benefits.* Entitlement to reemployment rights does not depend on continuation of Federal employee benefits coverage during service with a tribal organization.

[41 FR 27713, July 6, 1976, as amended at 51 FR 25188, July 11, 1986; 57 FR 10124, Mar. 24, 1992]

§ 352.704 Duration of reemployment rights.

(a) *Termination of authority.* Rights are not granted to persons who leave Federal employment for employment with a tribal organization after the date (December 31, 1985, at present) specified in section 105(e) of the Indian Self-Determination Act (88 Stat. 2209).

(b) *Maximum period of entitlement.* Entitlement to reemployment terminates at the end of 6 years following the date employment commences in the tribal organization unless exercised or otherwise terminated before that time as provided in this subpart.

§ 352.705 Return to Federal employment.

(a) *Conditions.* Reemployment rights may be exercised only under the following conditions. The individual must apply in writing to the former employing agency for reemployment not later than 30 calendar days after:

(1) Receipt of notice of involuntary separation from tribal employment. For this purpose, involuntary separation means any separation against the

will and without consent of the individual.

(2) Reversion of the function to Federal operation, whether reversion is through tribal or Federal action; or

(3) Separation with the joint consent of the tribal organization and the Federal agency for reasons of personal hardship or other special circumstances.

(b) *Termination.* A former employee's entitlement to reemployment terminates for:

(1) Failure to apply for reemployment within the time limit stated in paragraph (a) of this section;

(2) Resignation from tribal service without the joint consent, described in paragraph (a)(3) of this section, of the tribal organization and the Federal employer; or

(3) Failure to accept, within 10 calendar days of receipt thereof, an offer of reemployment made under § 352.706 which is determined by the employing agency or by the Merit Systems Protection Board on appeal to be a proper offer of reemployment.

§ 352.706 Agency response to reemployment application.

(a) *Employee's right to reemployment.* An employee is entitled to be reemployed by the reemploying agency as promptly as possible, and, in any event, within 45 calendar days after agency receipt of application.

(1) Within the competitive area the employee is entitled to reemployment in:

(i) The position held immediately before leaving the agency;

(ii) One in the same competitive level; or

(iii) Another position for which qualified and eligible at the same grade or level and in the same competitive area as the position the employee last held in the agency. The employing agency determines the position under paragraph (a)(1) (i), (ii), or (iii) of this section to which the employee is entitled. Reduction-in-force procedures shall be applied where necessary in determining the position to which the employee has a right. In applying the reduction-in-force regulations, the applicant shall be considered an employee of the agency.