

EMPLOYEE/MANAGEMENT RELATIONS

- 1. REASON FOR ISSUE:** To revise Department of Veterans Affairs (VA) policy regarding title 5 probationary/trial period employees covered under adverse action procedures.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook contains VA policies on employee/management relations. The pages in this handbook replace the corresponding page numbers in VA Handbook 5021 dated June 1, 2005. They reflect the changes in adverse action procedures, based on current case law and Merit Systems Protection Board decisions, which provide procedural and appeal rights to certain individuals serving on a probationary period in the competitive service and on a trial period in the excepted service. The changes also request clarification regarding separation of persons who fail to register under selective service law. These changes will be incorporated into the electronic version of VA Directive 5021 that is maintained on the [Office of Human Resources Management Web site](#).
- 3. RESPONSIBLE OFFICE:** The Employee Relations and Performance Management Service (051), Office of Human Resources Management.
- 4. RELATED DIRECTIVE:** VA Directive 5021, Employee/Management Relations.
- 5. RESCISSIONS:** None.

CERTIFIED BY:

/s/Robert T. Howard
Assistant Secretary for
Information and Technology

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

/s/Paul J. Hutter
Executive in Charge of the
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EMPLOYEE/MANAGEMENT RELATIONS
PART III. PROBATIONARY PERIOD ACTIONS

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CHAPTER 2. TITLE 5 PROBATIONARY/TRIAL PERIOD EMPLOYEES

1. SCOPE. This chapter contains the policy and procedure needed for taking actions against title 5 employees serving on a probationary [or trial] period under title 5 Code of Federal Regulations (CFR) Parts 315 or 307 in the Department of Veterans Affairs (VA). This includes employees appointed under 38 U.S.C. 7401(3), i.e., permanent full-time hybrids, and employees appointed under 38 U.S.C. 7405(a)(1)(B), i.e. part-time hybrids and part-time or full-time temporary hybrids serving on an appointment not limited to one year less, who have not completed a probationary period. General information regarding title 5 probationary periods is contained in VA Handbook 5005, part II, chapter 2, section A, paragraph 9. Information regarding probationary periods for permanent part-time and full-time hybrid employees is contained in VA Handbook 5005, part II, chapter 3, section F, paragraph 4 and VA Handbook 5005, part II, chapter 2, paragraph 9a. Information concerning supervisory and Senior Executive Service probationary periods may be found in VA Handbooks 5005, part III, Staffing, and 5027, part III, Senior Executive Service, respectively.

2. RESPONSIBILITIES

a. Managers/Supervisors will continually review the services of employees serving in a probationary status. Supervisors must assure by active measures that the work records of unsatisfactory employees or of those whose services are merely borderline are promptly referred to appropriate officials for action.

b. The Chief, Human Resources Management, or designee, is responsible for:

- (1) Assisting management officials with probationary procedures.
- (2) Reviewing proposed probationary actions for conformance with policies and procedures.
- (3) Advising employees about probationary procedures and rights.

[3. EXCLUSIONS

a. Any individual who meets one or more of the following definitions will not be covered by this chapter:

- (1) An individual in the competitive service who is not serving a probationary or trial period under an initial appointment;
- (2) An individual in the competitive service who has completed one (1) year of current continuous service under an appointment that was not a temporary appointment limited to one (1) year or less;
- (3) A preference eligible in the excepted service who has completed one (1) year of current continuous service in the same or similar positions in an Executive agency, the United States Postal Service, or the Postal Rate Commission;

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(4) An individual in the excepted service (other than a preference eligible) who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service;

(5) An individual in the excepted service (other than a preference eligible) who has completed two (2) years of current continuous service in the same or similar position in an Executive agency under an appointment that was not a temporary appointment limited to one (1) year or less.

b. Use the procedures outlined in VA Handbook 5021, Part I, for employees who are not covered by this chapter.]

4. [TERMINATION OF PROBATIONERS FOR UNSATISFACTORY PERFORMANCE OR CONDUCT]

a. [VA may terminate an employee serving on a probationary or trial period because his/her work performance or conduct fails to demonstrate fitness or qualifications for continued employment. Employment is to be terminated by notifying employees in writing as to why they are being separated and the effective date of the action. The information in the notice as to why an employee is being terminated shall, as a minimum, consist of the conclusions as to the inadequacies of his performance or conduct].

b. [VA may also terminate an employee serving on a probationary period for reasons based in whole or in part on conditions arising before the employee's appointment. Use procedures outlined in 5 CFR 315.805 for probationary pre-employment actions.

c. Probation ends when the employee completes his or her scheduled tour of duty on the day before the anniversary date of the employee's appointment. For example, when the last workday is a Friday and the anniversary date is the following Monday, the probationer must be separated before the end of the tour of duty on Friday since Friday would be the last day the employee actually has to demonstrate fitness for further employment.]

5. [APPEAL RIGHTS TO THE MERIT SYSTEMS PROTECTION BOARD. Probationary employees may appeal to the Merit Systems Protection Board in writing the decision to terminate them for unsatisfactory performance or conduct based upon the following]:

a. [**Discrimination.** An employee may appeal to the Board under this chapter a termination not required by statute which the employee alleges was based on partisan political reasons or marital status.]

b. [**Improper Procedure.** A probationer may appeal on the grounds that the termination was not effected in accordance with the procedural requirements of 5 CFR 315.805.]

[]

[6. SEPARATION OF PERSONS WHO FAIL TO REGISTER UNDER SELECTIVE SERVICE LAW. An individual who is serving under a probationary appointment made on or after November 8, 1985, and is not exempt from registration, will be terminated under 5 CFR, part 300, subpart G if he has not registered as required, unless:

- a. The individual registers for the Selective Service and submits a new statement of Selective Service registration status, including his date of birth, to VA; or,
- b. The individual is age twenty-six (26) or older and OPM determines that his failure to register was neither knowing nor willful, after the individual submits a written request for a determination by OPM and an explanation of why he failed to register.]