

New Law Requires Removal of Federal Law Enforcement Officers Convicted of Felonies

The omnibus Federal budget bill for Fiscal Year 2001 (Public Law 106-554) includes a provision that imposes new requirements on Federal agencies that employ law enforcement officers. Many DoD installations employ law enforcement officers. The provision, which is in Section 639 of P.L. 106-554, requires agencies to remove law enforcement officers from employment as law enforcement officers if they are convicted of a felony after the new law takes effect. Felony convictions that occurred before the new law takes effect are not included in this requirement; only new convictions will trigger the requirement. The new law went into effect on January 20, 2001. For purposes of this law, the term "law enforcement officer" has the same meaning that it does for retirement purposes under 5 USC 8331(20) or 5 USC 8401(17).

In addition to mandating the removal of law enforcement officers who are convicted of felonies, the new law also streamlines the procedures that agencies will follow if one of their law enforcement officers receives a felony conviction. The normal 30-day advance notice for an adverse action will not apply. Instead, the agency must remove the employee from the law enforcement position on the last day of the first full pay period after the agency receives notice of the felony conviction. The employee will still get written notice of the impending removal, an opportunity to reply to it, and the right to be represented by an attorney or other representative. The employee will also still receive a written decision letter. However, none of these due process requirements can delay the effective date of the removal. The removal from the law enforcement position still must occur on the last day of the next full pay period after the agency receives notice of the conviction.

Agencies may get word of a felony conviction of one of their law enforcement officers in a variety of ways. Once the agency is aware of the conviction, the requirements of this new law apply. The law requires the agency to deliver notice of the proposed removal to the employee no later than 5 calendar days after getting notice of the conviction. The employee has a right to reply to the proposal. However, in considering any reply the employee may make, the agency should bear in mind that if the employee is removed, the new law only allows him or her to appeal the removal on the limited grounds of whether he or she is a law enforcement officer, whether he or she has been convicted of a felony, and whether the felony conviction has been overturned on appeal. So, an employee's grounds for disputing a removal under this new law are rather limited. Existing law [5 USC 7513(b)(2)] provides that employees should have no less than seven days to reply to a proposed adverse action.

After receiving any reply the employee may make, the agency must provide the employee with a written decision, and must proceed with the removal if the employee is covered by the requirements of this new law. The fact that an employee has appealed a felony conviction makes no difference. Only a successful appeal that has already been

completed will make a difference. The law does require an agency to retroactively set aside a removal if the employee prevails in an appeal of a felony conviction after being removed from employment as a Federal law enforcement officer under this new provision.

The new law does not necessarily require removing a law enforcement officer from employment altogether. He or she must be removed from law enforcement work. Thus, an activity that employs a law enforcement officer who is convicted of a felony might conceivably look for other jobs outside of law enforcement in which the employee could be placed. However, the timeframes of the new law are very short, so a suitable vacancy would have to be available immediately, and the employee would have to meet all qualification requirements to be placed in another position. The fact that an employee has a felony conviction would certainly call into serious question whether an activity would want to place the employee in some other job, and, of course, if the employee is imprisoned, removal from employment would presumably be the only possible action to take.

This new law will be codified in the U.S. Code as 5 USC Section 7371. It would be advisable for personnel/human resources offices to notify their security/law enforcement organization, and their legal office, about this new statutory requirement. Installations having questions about this matter may contact the Field Advisory Service, Labor and Employee Relations Branch at DSN 426-6301, or commercial (703) 696-6301, select #3 from the menu. A copy of the text of the new law is attached to this message.

SEC. 639. MANDATORY REMOVAL FROM EMPLOYMENT OF FEDERAL LAW ENFORCEMENT OFFICERS CONVICTED OF FELONIES.

(a) In General. --Chapter 73 of title 5, United States Code, is amended by adding after subchapter VI the following:

``SUBCHAPTER VII--MANDATORY REMOVAL FROM EMPLOYMENT OF CONVICTED LAW ENFORCEMENT OFFICERS

``7371. Mandatory removal from employment of law enforcement officers convicted of felonies

``(a) In this section, the term--

``(1) `conviction notice date' means the date on which an agency that employs a law enforcement officer has notice that the officer has been convicted of a felony that is entered by a Federal or State court, regardless of whether that conviction is appealed or is subject to appeal; and

``(2) `law enforcement officer' has the meaning given that term under section 8331(20) or 8401(17).

“(b) Any law enforcement officer who is convicted of a felony shall be removed from employment as a law enforcement officer on the last day of the first applicable pay period following the conviction notice date.

“(c)(1) This section does not prohibit the removal of an individual from employment as a law enforcement officer before a conviction notice date if the removal is properly effected other than under this section.

“(2) This section does not prohibit the employment of any individual in any position other than that of a law enforcement officer.

“(d) If the conviction is overturned on appeal, the removal shall be set aside retroactively to the date on which the removal occurred, with back pay under section 5596 for the period during which the removal was in effect, unless the removal was properly effected other than under this section.

“(e)(1) If removal is required under this section, the agency shall deliver written notice to the employee as soon as practicable, and not later than 5 calendar days after the conviction notice date. The notice shall include a description of the specific reasons for the removal, the date of removal, and the procedures made applicable under paragraph (2).

“(2) The procedures under section 7513 (b) (2), (3), and (4), (c), (d), and (e) shall apply to any removal under this section. The employee may use the procedures to contest or appeal a removal, but only with respect to whether--

“(A) the employee is a law enforcement officer;

“(B) the employee was convicted of a felony; or

“(C) the conviction was overturned on appeal.

“(3) A removal required under this section shall occur on the date specified in subsection (b) regardless of whether the notice required under paragraph (1) of this subsection and the procedures made applicable under paragraph (2) of this subsection have been provided or completed by that date.”.

(b) Technical and Conforming Amendment .--The table of sections for chapter 73 of title 5, United States Code, is amended by adding after the item relating to section 7363 the following:

“SUBCHAPTER VII--MANDATORY REMOVAL FROM EMPLOYMENT OF LAW ENFORCEMENT OFFICERS

“7371. Mandatory removal from employment of law enforcement officers convicted of felonies.”.

(c) Effective Date .--The amendments made by this section shall take effect 30 days after the date of enactment of this Act and shall apply to any conviction of a felony entered by a Federal or State court on or after *(insert effective date)*.