

Background: There are various means by which an employee may be assigned to perform work in support of the Department's contingency and other critical operations. These frequently asked questions and answers (FAQs) are presented to assist hiring managers and human resources practitioners distinguish between types of assignments and potential effects on the employment status of individuals being assigned.

Frequently Asked Questions and Answers:

Q1. Is a civilian deployment to a contingency operation considered the same as an "overseas assignment" (employment in foreign areas) which would grant an entitlement to return rights?

A1. No. Department of Defense (DoD) civilians who are selected for and accept deployment assignments to contingency operations are NOT covered by the statutory or regulatory provisions governing overseas return rights. A deployment assignment is NOT considered an "overseas assignment" under the definition of title 10, U.S. Code, Section 1586 or DoD Instruction (DoDI) 1400.25, Volume 1230, "DoD Civilian Personnel Management System: Employment in Foreign Areas and Employee Return Rights," and these deployments do not convey statutory "return rights." The deployment of a DoD civilian to support an expeditionary assignment is considered a temporary assignment. There are no permanently established DoD employing organizations in the theater of operations. The civilian employee is deployed, typically through temporary duty (TDY) assignment, to the location of the contingency operation. In some cases, the employee's deployment may be processed as a Temporary Change of Station (TCS). While deployed from the employing organization, the DoD civilian continues to officially occupy their position of record in their "home" employing organization for the duration of the temporary assignment to the contingency location, resuming such duties following completion of the temporary assignment.

Q2. How may personnel actions be processed to deploy DoD civilians, as well as to end the assignment?

A2. As explained in Q1 above, permanent DoD civilians who deploy through TDY or TCS to a contingency operation, continue to occupy their permanent position of record. The Personnel Action affected in this scenario is a Reassignment NTE, the purpose of which is to document the individual's deployment status, while making no change to the employee's permanent position of record. When the TDY is complete, the Reassignment NTE is terminated.

Q3. What if an employee accepts a different position, rather than just being sent TDY from their position of record?

A3. That is a different scenario. If an organization fills a specific emergency essential (E-E) position that is intended to support contingency operations, they are filling a vacant position belonging to that organization. For example, the Defense Contract Management Agency (DCMA) has Contract Specialist positions, some of which are E-E, and some of which are not. When they fill either type of position, they are filling a vacancy for DCMA, with different conditions of employment. An employee selected for one of their E-E positions would have a requirement for expected deployment, but would do this as a DCMA employee. Therefore, if an individual from outside of DCMA applies and is selected for a DCMA position, they would receive an appropriate assignment (i.e., transfer) to DCMA as the employing organization. Even if the assignment with the new employing organization is time-limited, the individual accepting the position would not be entitled to return to the position he/she is vacating.

Q4. When a current permanent employee wants to accept a time-limited position, would the employee have “return rights” to their former permanent position after completing the temporary assignment?

A4. That depends. If the time-limited vacancy being filled is **within the employee’s same** (e.g., the employee is assigned to Army and Army is filling the vacancy) there is a requirement within 5 CFR 335, Promotion and Internal Placement, to document the conditions of assignment in writing prior to effecting the action. This includes documenting that the employee may be returned at any time to the permanent position of record or to a different position of equivalent grade and pay, as determined by the agency. If the employee is changing organizations (**within the same agency**) the specific details of assignment at the end of the temporary action is an internal agency decision, and could include placement in the gaining or losing organization, consistent with the terms of 5 CFR 335. Directive-type Memorandum (DTM) 17-004, Attachment 3, paragraph 7, “Administrative Procedures,” also states that employees who are “management assigned” (i.e., sent for deployment as directed or at the request of their management chain) to serve expeditionary requirements **WILL** be granted the right to return to the position held prior to the deployment or a comparable position. For deployment opportunities within an employee’s employing agency, employees who apply and are selected through competitive procedures for a new position (versus being management assigned) must be placed at the end of the temporary assignment, as determined by the gaining and losing organizations **within** the same agency. Employees who voluntarily accept a position outside of their employing agency have no entitlement to return placement with their former agency at the end of the assignment. 5 CFR 335 provides no authority for agencies to make time-limited assignments between agencies (temporary promotions or temporary reassignments); the authority only exists within a single agency.

Q5. What if the E-E vacancy being filled is in a different agency? Will the employee have return rights then?

A5. Probably not. If an employee is selected for a vacancy **in a different agency** (agency is defined as Army, Navy, AF, etc.), and a personnel action is processed to move the employee to the other agency, return placement to the former position/agency may not be guaranteed. This is because the employee is leaving the rolls of their current organization to take a new position, typically through a Conversion to Appointment or Transfer action. These types of personnel actions cause a change in the employing agency and could also cause a change to the type and tenure of appointment. In some cases, the employee’s previous agency may be willing to place the employee at the end of a pre-determined amount of time with another agency, but that agency cannot guarantee or grant an **entitlement** of return. This is because employee movements between agencies are generally considered “new hires” to the agency, and therefore subject to consideration of priority placement candidates including the Interagency Career Transition Assistance Program (ICTAP), and could also be limited by agency hiring restrictions, agency placement and internal promotion policies, bargaining unit agreements, etc.. At most, the previous agency could agree to **ATTEMPT** to place the employee, but could not grant an entitlement. In summary, there is no such thing as “return rights” when an employee moves from one agency to another.

Q6. Is it possible for an employee to support the deployment needs of a different agency, without having to leave the rolls of their home agency?

A6. It may be possible for one agency to reach an agreement with another agency to utilize their personnel in support of TDY/TCS deployment missions without leaving the rolls of the employee’s home agency. This would require agreement by both agencies and would likely be accomplished through a Memorandum of Agreement on the type of support and funding that would be provided. In this situation, the employee could be “Detailed” to a different agency and/or sent TDY for deployment, under whatever conditions were agreed upon

between the two agencies. The key is that this type of arrangement does not involve the employee leaving the rolls of the home agency. It also does not change the employee's position of record – he/she is being Detailed (which doesn't change the permanent position) and/or sent TDY (which also doesn't change the permanent position of record). At the end of the deployment, the employee's Detail or TDY would be terminated, and the employee would still occupy his/her permanent position of record and resume those duties.

Q7. What is meant by the statement in the DTM that refers to deployment “in support of the employee’s employing organization”?

A7. DTM 17-004 includes the following in paragraph 7. ADMINISTRATIVE PROCEDURES:

“a. When a DoD civilian employee is required to deploy away from his or her normal work location **in support of the employee’s employing organization** under the procedures in paragraphs 1-4 of Attachment 3, he or she shall be released and allowed to deploy in a timely fashion to meet an expeditionary requirement unless there is a significant negative impact on the mission of his or her home unit.”

The intent of this statement is to explain that if a DoD Component identifies, approves and deploys a DoD civilian from within their own workforce for an expeditionary position in support of their organization, the employing organization should release the civilian. However, as stated in DTM 17-004, the Service/Component has the authority to disapprove an individual’s deployment based on a determination that it would have a “significant negative impact on the mission” of the home unit. This ability to disapprove internal requests for deployment does NOT change the Global Force Management (GFM)-based processes described throughout the DTM where Components are obligated to meet requirements at least up to the Force Pool level. The policy guidance is intended to make it clear that Components continue to have the authority to make decisions with respect to assignment of individual personnel.

Q8. What are the “return rights” for employees who are management assigned to a deployment?

A8. The DTM states in paragraph 7a, “Those (employees) who are management assigned from their normal position to serve expeditionary requirements under the procedures in Paragraphs 1-4 of this attachment will be granted the right to return to the position held prior to their deployment or to a position of similar grade, level, and responsibility within the same local organization, regardless of length of deployment.” This is intended to cover situations where a Component has directed the deployment of a current employee, and issued TDY/TCS orders for that purpose. In this scenario, the Component would return the employee at the conclusion of their TDY/TCS to the position occupied prior to deployment, or one that is comparable. The need to look for a “comparable position” would only be a factor if some type of change had occurred in the organization or its positions while the employee was on the deployment, thereby requiring a comparable change to be applied during or after the employee’s return.

Q9. What is the distinction in the DTM for employees who accept assignments with other organizations?

A9. The DTM states in reference to return placements after deployment that: “This does not apply to employees **who accept voluntary assignments outside their employing organization (such voluntary assignments are not considered management assignments)**, unless otherwise determined by the employee’s organization. The intent of this statement is to make it clear that if a DoD employee accepts a deployment assignment with a **different** Component, their placement at the end of the deployment period may be different or nonexistent, depending on the nature of the assignment. If the employee is moved through formal personnel action to a different agency (generally, a different Component) **to fill a vacancy of the other agency**, there is no entitlement to return placement in the original agency. The only way the employee could accept deployment

with a different agency without losing their permanent position of record, would be if there was no personnel action that provided a new appointment to the other agency. The two agencies might be willing to reach agreement on a cross-agency TDY, a Detail assignment, or some other reciprocal arrangement that did not remove the employee from their home agency rolls, but this is the only way the employee could be ensured that his/her status in the former agency remained unaffected.

Q10. What options do Components have in determining how to fill expeditionary positions, and does this make a difference on return rights?

A10. As explained in DTM 17-004, DoD Components have the authority to determine how best to meet their assigned civilian expeditionary requirements. Options include:

(1) Establishing Emergency-Essential (E-E) positions within the Component as an expeditionary cadre and sending those individuals TDY or TCS as needed. These positions could be filled on a permanent or time-limited basis. The E-E employee who is part of the expeditionary cadre would remain on the rolls of the Component that established the E-E positions and would continue to occupy their position of record before, during and after the deployment. Return rights are not a factor since the employee would not be leaving their position of record. The employee would remain assigned to the E-E position based on the tenure and duration of that appointment (i.e., on a permanent basis or until terminated (if temporary)).

(2) Maintaining a pool of Capability-Based Volunteers (CBVs) within the Component that is considered adequate to meet anticipated requirements for deployment assignments. The employee would be volunteering for deployment within their own Component where the typical deployment assignment would be accomplished as TDY/TCS with no change in their permanent position of record. In this situation, there is no “return” because the employee is not vacating their permanent position.

(3) Filling time-limited positions through available hiring authorities, if needed, to supplement the current workforce. This is essentially the same as Option 1, since the positions would be E-E, with the distinction that this strategy is used to fill E-E positions only when and if needed, versus establishing an E-E cadre with a longer-term purpose. The Component is actually filling a vacancy on a time-limited basis, within that same Component, with the intent of sending the employee TDY or TCS for deployment once the vacancy is filled. Employees of that same Component who are selected for such a position, would have placement rights at the end of a temporary reassignment or temporary promotion as explained in the response to Q4. However, employees of a different Component (or agency) who applied for a time-limited position with another Component, would not have a guaranteed right of return at the end of the assignment. As explained previously, this is because the employee left the rolls of their home agency to take the position and would not have return placement entitlements at the end of the time-limited assignment.

Q11. What if a current employee wants to apply for a time-limited E-E job opportunity announcement (JOA) with a different agency, with a clear understanding that their placement at the end of the assignment wasn't guaranteed? Could they do that?

A11. Yes, but this is certainly not advised. Employees considering this option need to understand they have NO right to placement at the end of the time-limited appointment, meaning they will likely be separated from Federal service. If a current permanent employee leaves the rolls of their home agency or otherwise accepts a time-limited APPOINTMENT, the employee's tenure changes according to their type of appointment. Employees should also understand that when on a time-limited appointment, there is no entitlement to remain in that position until the specified NTE date. Temporary appointments can be terminated at any time; the NTE date is a “not to exceed” time limitation rather than a guarantee of employment until that date. Term

appointments are different, and employees do have advance notice entitlements and certain procedural rights if the appointment is to be terminated in advance of the NTE date, but again, there is not a guarantee of a job until that date is reached. In addition, type of appointment/tenure is a factor during reductions-in-force. Hiring organizations should also be aware of employee entitlement to severance pay in such situations. Employees should be advised on these matters, as well as on potential effects to their benefits.

Q12. To avoid any unintended negative impacts on current permanent employees, can an agency filling a time-limited E-E position decide to limit their consideration to “outside hire” candidates only, and exclude current employees from being considered?

A12. No. If the activity issues the JOA through external competitive examining procedures or other external hiring methods, any individuals including current employees who are eligible may be considered. It would be a prohibited personnel practice to deny someone consideration for a vacancy announcement that is open to them through formal competition. An individual who is a current employee may choose to apply through external announcements because they too are part of the general public. However, employees selected through this type of external announcement would be given a new time-limited appointment and as a result, would become temporary or term employees, having no right of continued employment after the temporary or term appointment ended. This is a significant action that employees should not take lightly!

Q13. Can an agency limit the area of consideration for a JOA to their own internal workforce within the same agency?

A13. Each agency has their own policies on merit promotion procedures and some have bargaining agreements that also affect these programs. Unless there is an internal agency rule that says otherwise, most agencies have the ability to limit the area of consideration for JOAs to their own internal workforce (internal to the agency). However, if they choose to open announcements to a broader group (beyond the current agency), they are required by law to fairly consider all candidates who meet the eligibility requirements under the area of consideration they specify.

Q14. If an employee wants to apply for a temporary/term JOA issued by a different agency, can their current home/employing agency disapprove their release?

A14. No. The employing agency cannot stop an employee from applying for other jobs or from deciding to leave the agency. What’s key is making sure the employee fully understands the impact of a move like this on their career and benefits.

Q15. If an employee is without a job when a temporary or term appointment ends, are any benefits retained?

A15. Employees who move from permanent to time-limited appointments without a break in service may be eligible to retain benefits such as insurance and retirement for the duration of the time-limited appointment, but are strongly cautioned to check the details of this with their employing agency BEFORE accepting the appointment. Employees may also have an eligibility for severance pay when separated from the time-limited appointment, but again are cautioned to verify this BEFORE accepting an appointment with a tenure change.

Q16. With all the problems and cautions explained in this document, why would an agency fill their expeditionary requirements via time limited appointments?

A16. Time limited (temporary and term hiring authorities) have a very useful purpose within DoD employment programs, and have been used for many years as a viable tool for filling expeditionary requirements. What’s different in the DTM and the future sourcing of DoD-EC positions (formerly called CEW), is that **all** validated

civilian requirements that are needed to support a Combatant Command are going to be aligned with a specific DoD Component for sourcing, with the identified Component having responsibility for filling that requirement. The vast majority of civilian E-E positions have always been filled in this manner (by a specific Component), but a small number of civilian requirements had been left open to be filled through a non-specific, centrally managed volunteer pool from any DoD agency. In the future, a centrally managed volunteer pool won't exist. Components may have their own internal volunteer pools, or they may establish and fill E-E positions to meet their requirements. What's important to understand is there are significant differences in employee status and options if they are being assigned via TDY or TCS for an expeditionary assignment (with no change in their position of record), as compared to being moved to a different position through **internal agency** procedures (with a time-limited change to the employee's position of record), versus being hired into a new temporary/term appointment or being converted to a different appointment with a different agency. All of these scenarios have different impacts on an employee's status as described in these FAQs.

References:

- a. Directive-type Memorandum 17-004, Department of Defense Expeditionary Civilian Workforce, January 25, 2017
- b. Department of Defense Instruction (DoDI) 1400.25, Volume 1230, 26 July 2012, SUBJECT: DoD Civilian Personnel Management System: Employment in Foreign Areas and Employee Return Rights.
- c. 5 Code of Federal Regulations (CFR), Part 335, Promotion and Internal Placement
- d. Title 10, U.S. Code, Section 1586, Rotation of Career-conditional and Career Employees Assigned Outside the United States
- e. U.S. Office of Personnel Management Guide to Processing Personnel Actions (GPPA)
- f. Department of Defense Memorandum, Documentation of DoD Civilian Employees Officially Assigned to Military Contingency Operations Overseas, 23 June 2006