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Chapter 310

Employment of Relatives

Contents

SUBCHAPTER 1. RESTRICTIONS ON THE EMPLOYMENT OF RELATIVES

- 1-1. Coverage
- 1-2. Definitions
- 1-3. Restrictions

SUBCHAPTER 2. EMERGENCY EXCEPTIONS

- 2-1. Coverage
- 2-2. Exceptions

SUBCHAPTER 3. MISCELLANEOUS PROVISIONS

- 3-1. Saving Provision
- 3-2. Penalties

<i>For related information on—</i>	<i>See—</i>
Text of pertinent laws, rules, and regulations.....	Supplement 990-1
Members-of-family requirement.....	Chapter 338
Employment of sons and daughters of agency personnel...	Chapter 332, Appendix J
	Chapter 213
	Chapter 338

Subchapter 1. Restrictions on the Employment of Relatives

1-1. COVERAGE

a. **Statutory.** Section 3110 of title 5, United States Code, restricts the employment of relatives of a public official in the official's own agency or in an agency over which he exercises jurisdiction or control. The restrictions apply throughout all three branches of the Federal Government and in the government of the District of Columbia. The restrictions apply to positions whose pay is derived from non-appropriated as well as appropriated funds.

b. **Regulatory.** In general, part 310 of the Commission's regulations, Employment of Relatives, parallels the statutory restrictions. Except as specified in subchapter 2, part 310 applies throughout the executive branch and in those portions of the legislative and judicial branches and of the government of the District of Columbia which are in the competitive service.

1-2. DEFINITIONS

a. **Agency.** In 5 U.S.C. 3110, "agency" is defined as an executive agency (i.e., an executive department, a Government corporation, or an independent establishment); an office, agency, or other establishment in the legislative branch; an office, agency, or other establishment in the judicial branch; and the government of the District of Columbia.

b. **Public official.** A public official is anyone who by law, rule, regulation, or delegation has appointment or promotion authority within his organization, or authority to recommend employees for appointment or promotion. Thus, any supervisor, regardless of his grade level, who has authority to appoint or promote, or to recommend the appointment or promotion of employees supervised by him, is a public official. Similarly, a personnel or placement officer who

has authority to appoint or promote or to recommend the appointment or promotion of employees is a public official. However, making a determination that a person is eligible for appointment under applicable laws, regulations, or standards does not by itself constitute a recommendation.

c. **Relative.** The term "relative" includes the specific relationships stated in 5 U.S.C. 3110; i.e., father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. When popular and legal usage differ, the strict or legal definition is applied to all these terms. Specifically:

Nephew means the son of a public official's brother or sister.

Niece means the daughter of a public official's brother or sister.

Uncle means the brother of a public official's father or mother.

Aunt means the sister of a public official's father or mother.

Brother-in-law means the brother of a public official's spouse, or the spouse of his sister.

Sister-in-law means the sister of a public official's spouse, or the spouse of his brother.

d. **Appointment, employment, promotion, or advancement.** (1) *Appointment and employment.* The terms "appointment" and "employment" are essentially synonymous and include personnel actions, other than promotions, which are discretionary with an appointing official and are not based on a statutory requirement. Examples of appointment and employment subject to the restrictions are initial hires from a register or other source, reinstatements,

reassignments, and transfers. However, a non-discretionary action such as restoration after military service is not an appointment or employment for this purpose. Likewise, a conversion to career employment based on three years of indefinite or TAPER employment (section 7-6 of chapter 315) is not appointment or employment for this purpose.

(2) *Promotion and advancement.* The terms "promotion" and "advancement" are also essentially synonymous. In general, they include personnel actions which increase an employee's grade, pay, or rank, provided the action is discretionary with the appointing official and is not based on a statutory requirement. A within-grade increase is not a promotion or advancement for this purpose. An action which increases an employee's relative standing in the agency's organizational structure is subject to the restriction, even though no increase in grade or pay is involved.

e. *Chain of command.* The chain of command is the line of supervisory personnel that runs from a public official to the head of his agency.

f. *Jurisdiction or control.* An official exercises jurisdiction or control over an agency only if he exercises direct control over some or all of the agency's operations. Thus, Members of Congress serving on an agency's appropriations committee or officials of such central agencies as the Bureau of the Budget or the Civil Service Commission are not considered to exercise jurisdiction or control over an agency in the sense contemplated here.

1-3. RESTRICTIONS

a. *On advocacy.* (1) *Basic restriction.* A public official may not advocate a relative's appointment, employment, promotion, or advancement anywhere in his agency or in an agency over which he exercises jurisdiction or control. A public official advocates a relative's appointment if he recommends the action either orally or in writing.

(2) *Referral for consideration.* Because of the special relationship between a supervisor and his

subordinates, the regulations provide that an official is considered to advocate a relative's appointment if he simply refers the relative for consideration to one of his subordinates (i.e., to someone standing lower in the chain of command). A referral for consideration, in this context, is any action, even though short of an actual recommendation, that reveals an interest in securing or facilitating a person's consideration for appointment, employment, promotion, or advancement. Examples of referrals for consideration are the transmittal of an application to a personnel or line official, providing a letter of introduction to an appointing official, or the like.

(3) *Employment inquiries.* A public official may properly reply to a written or oral employment inquiry (voucher) about the qualifications and suitability of a relative who has applied for employment in the public official's agency, provided he refrains from advocating employment of the relative. Completion of a voucher used to verify past experience and determine suitability is not in itself an advocacy or a recommendation within the prohibitions of the statute and the regulations. On the other hand, an affirmative answer to the question, "Would you recommend this person for appointment in _____ agency?" constitutes advocacy. The official should state in reply to such a question that in view of the restrictions on employment of relatives he must refrain from answering any questions or making any statements that could be construed as advocacy on his part of his relative's appointment.

b. *On personnel actions.* (1) *Basic restrictions.* A public official may not appoint, employ, promote, or advance in his agency or in an agency over which he exercises jurisdiction or control (a) one of his own relatives or (b) the relative of any other public official in the agency if that official has advocated the action. These restrictions apply through the entire agency; for example, a public official in the Department of the Army may not advocate

employment of a relative in the Department of the Navy or elsewhere in the Department of Defense, and a public official in the Agency for International Development may not advocate employment of a relative in the Peace Corps or elsewhere in the Department of State.

(2) *Employment of subordinates.* The relative of a public official may be employed by a subordinate of the official if the official himself is in no way involved in the action and if the agency concerned has no regulations prohibiting such employment. However, when a person officially charged with approving personnel actions delegates this responsibility to appointing officials, one of his relatives can be appointed by a subordinate official only if there is full and continuing delegation of authority. If the action is taken in the name of the public official, or the public official is required to review or approve the action, it is still officially the public official's action, and the employment restrictions apply.

(3) *Specific applications.* (a) A supervisory position classification specialist is not precluded from determining that the position of one of his own relatives is classifiable at a higher level, as far as 5 U.S.C. 3110 or part 310 is concerned; although he is a public official, this action involves the position rather than the incumbent. However, as agency conduct regulations require employees to avoid any action which might result in or create the appearance of preferential treatment to any person, a classification specialist in this situation should disqualify himself.

(b) A public official may not promote a relative whose position is reclassified at a higher grade if the action is discretionary with the public official. However, he may promote the relative when failure to do so is an adverse

action under the Commission's regulations and instructions; i.e., when the position is upgraded without significant change in duties either on the basis of a new classification standard or as the result of correction of an original classification error.

(c) A relative of a public official may not be promoted if the public official was a member of the promotion panel that selected the relative for promotion unless the public official disqualified himself and did not participate in the decision affecting the relative.

c. On selections from certificates of eligibles.

(1) *Preference eligibles.* (a) The restrictions in this subchapter do not prevent the appointment of a relative who is a preference eligible if (1) his name is within reach for selection from an appropriate certificate of eligibles and (2) an alternative selection cannot be made from the certificate without passing over the preference eligible and selecting a person who is not a preference eligible. This will occur only when the preference eligible is first on a certificate of three and both lower-ranking eligibles are nonpreference eligibles.

(b) A public official cannot later promote or advocate the promotion of a relative who is appointed under the above provision. The provision applies only to appointments.

(2) *Consideration of eligibles.* An appointing official need not consider an eligible on a certificate if appointment of the eligible is prohibited by the restrictions in this subchapter; he may consider the next available eligible instead. Advance approval need not be obtained from the Commission in order to eliminate the eligible from consideration, but an explanatory statement must be furnished on or with the certificate report.

Subchapter 2. Emergency Exceptions

2-1. COVERAGE

The provisions of this subchapter apply to all offices which are subject to the restrictions of section 3110 of title 5, United States Code; i.e., to an office, agency, or other establishment in the executive, legislative, or judicial branch of the Federal Government, and in the government of the District of Columbia.

2-2. EXCEPTIONS

When necessary to meet urgent needs resulting from an emergency posing an immediate

threat to life or property, an agency may employ relatives to meet these needs without regard to the restrictions in section 3110 of title 5, United States Code, or part 310 of the Commission's regulations. Appointments under these conditions are temporary not to exceed one month, but may be extended for a second month if the emergency still exists. In the competitive service, the initial appointment is a special needs appointment, which may be extended only with the prior approval of the appropriate Commission office. (See Chapter 316, Subchapter 4, Temporary and Indefinite Employment.)

Subchapter 3. Miscellaneous Provisions

3-1. SAVING PROVISION

Section 3110 of title 5, United States Code, was enacted by section 221 of Public Law 90-206. Section 221(c) included a saving provision, reading as follows:

"(c) The amendments made by this section do not apply to an appointment, employment, advancement, or promotion made or advocated by a public official of any individual who is a relative of the public official if, prior to the effective date of this section, the individual was appointed by the public official, or received an appointment advocated by the public official, and is serving under the appointment on such effective date."

It is to be noted that the saving provision in section 221(c) does not apply to all relatives employed when the law becomes effective. It applies only in a situation in which a public official, after December 15, 1967, undertakes

to appoint, employ, advance, or promote a relative or recommends for appointment, employment, advancement, or promotion a relative *whom he himself had appointed* prior to December 16, 1967, or *whose appointment was advocated by him* before that date (see 47 Comp. Gen. 636).

3-2. PENALTIES

Section 3110(c) of title 5, United States Code, provides:

"(c) An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced."

Payments made in violation of section 3110 are subject to recovery. In addition, public officials who violate the civil service regulations governing employment of relatives are subject to applicable penalties on this account.

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