

TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES**PART III - EMPLOYEES****Subpart B - Employment and Retention****CHAPTER 35 - RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT****SUBCHAPTER I - RETENTION PREFERENCE****§ 3504. Preference eligibles; retention; physical qualifications; waiver**

(a) In determining qualifications of a preference eligible for retention in a position in the competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

- (1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and
- (2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible described in section 2108 (3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible's last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in the response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 429; Pub. L. 95–454, title III, § 307(g), title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1149, 1224.)

Historical and Revision Notes

| Derivation | U.S. Code | Revised Statutes and Statutes at Large |
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| 5 U.S.C. 854 (1st 2 sentences, so much as relates to retention). | | June 27, 1944, ch. 287, § 5 (1st 2 sentences, so much as relates to retention), 58 Stat. 388. |

The words “in the competitive service, an Executive agency, or the government of the District of Columbia” are added on authority of former sections 851, 858, and 869 which are carried into this title. The words “preference eligible” are substituted for “veteran”.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Amendments

1978—Pub. L. 95–454 designated existing provisions as subsec. (a), substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission”, and added subsec. (b).

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpint.html>).

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.