

OPM 01-65

DATE: October 8, 2001

TO: All Appointing Authorities

FROM: Oscar B. Jackson, Jr., Administrator and
Cabinet Secretary of Human Resources

RE: **Temporary Filling of Positions Held by Classified
Employees Called to Military Service**

The federal Uniformed Services Employment and Reemployment Rights Act grants employees who are called to military service the right to return to their positions or comparable positions, except in certain limited circumstances. Section 209 of Title 74 and Section 48 of Title 72 of the Oklahoma Statutes provide for the appointment of a substitute "acting incumbent" during the duration of the incumbent's military service when in the public interest. These provisions of the Oklahoma Statutes provide that such "acting incumbents" must qualify as required for the regular incumbent and shall receive the same salary as fixed by law.

In consultation with the Office of the Attorney General, the Office of Personnel Management has determined that the above-mentioned sections of the Oklahoma Statutes provide authorization for the hiring of unclassified employees as "acting incumbents" to temporarily perform the duties of a classified employee while the classified employee is absent due to military service. Since the statute requires acting incumbents to meet the minimum qualifications for the position, agencies should review the current job family descriptor and the qualifications of a prospective employee before hiring the employee as an acting incumbent.

Position Numbers for these positions will have to be assigned, and requests to establish these positions should be submitted to David Hays, Director of OPM Classification Division. The OPM-14 or other authorized document appointing employees as acting incumbents must include Title 72, Section 48 as the unclassified authorization and may also include a remark to identify the action as "Unclassified appointment as acting incumbent during the absence of the permanent incumbent due to military service."

Because these acting incumbents may be working alongside and performing similar duties as permanent classified employees, the Office of Personnel Management recommends that state agencies provide acting incumbents with clear information regarding their status with the agency. The Office of Personnel Management has developed the attached form for this purpose.

Please note that acting incumbents cannot become classified employees except through regular Merit System hiring procedures.

In addition to the above procedure, Merit System agencies also have the option of detailing another classified employee to special duty in a position held by an incumbent who is temporarily absent due to military service, pursuant to Merit Rule 530:10-5-11. An employee may be detailed to special duty for up to 12 months if the employee meets the minimum qualifications of the job to which detailed, and the position to which the employee is detailed is a filled position (i.e., temporarily vacant because the incumbent is absent).

NOTICE TO ACTING INCUMBENTS

I understand that I have been hired as an "acting incumbent" to perform the duties of an employee who is temporarily absent due to military duty. This is an unclassified appointment. I understand that it gives me no right to permanent employment or continuing employment in any classified or unclassified position in the state service. I understand that I will be employed in an "at will" capacity, and may be released at any time for any reason or no reason at all.

Signature

Date