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# 5 U.S. Code § 2105 - Employee

U.S. Code

Notes

Authorities (CFR)

**(a)** For the purpose of this title, “employee”, except as otherwise provided by this section or when specifically modified, means an officer and an individual who is—

**(1)** appointed in the civil service by one of the following acting in an official capacity—

**(A)** the President;

**(B)** a Member or Members of Congress, or the Congress;

**(C)** a member of a uniformed service;

**(D)** an individual who is an employee under this section;

- (E) the head of a Government controlled corporation; or
  - (F) an adjutant general designated by the Secretary concerned under section 709(c) of title 32;
- (2) engaged in the performance of a Federal function under authority of law or an Executive act; and
- (3) subject to the supervision of an individual named by paragraph (1) of this subsection while engaged in the performance of the duties of his position.
- (b) An individual who is employed at the United States Naval Academy in the midshipmen's laundry, the midshipmen's tailor shop, the midshipmen's cobbler and barber shops, and the midshipmen's store, except an individual employed by the Academy dairy (if any), and whose employment in such a position began before October 1, 1996, and has been uninterrupted in such a position since that date is deemed an employee.
- (c) An employee paid from nonappropriated funds of the Army and Air Force Exchange Service, Navy Ships Stores Program, Navy exchanges, Marine Corps exchanges, Coast Guard exchanges, and other instrumentalities of the United States under the jurisdiction of the armed forces conducted for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the armed forces is deemed not an employee for the purpose of—
- (1) laws administered by the Office of Personnel Management, except—
    - (A) section 7204;
    - (B) as otherwise specifically provided in this title;
    - (C) the Fair Labor Standards Act of 1938;
    - (D) for the purpose of entering into an interchange agreement to provide for the noncompetitive movement of employees between such instrumentalities and the competitive service; or
    - (E) subchapter V of chapter 63, which shall be applied so as to construe references to benefit programs to refer to applicable programs for employees paid from nonappropriated funds; or
  - (2) subchapter I of chapter 81, chapter 84 (except to the extent specifically provided therein), and section 7902 of this title.

This subsection does not affect the status of these nonappropriated fund activities as Federal instrumentalities.

**(d)** A Reserve of the armed forces who is not on active duty or who is on active duty for training is deemed not an employee or an individual holding an office of trust or profit or discharging an official function under or in connection with the United States because of his appointment, oath, or status, or any duties or functions performed or pay or allowances received in that capacity.

**(e)** Except as otherwise provided by law, an employee of the United States Postal Service or of the Postal Regulatory Commission is deemed not an employee for purposes of this title.

**(f)** For purposes of sections 1212, 1213, 1214, 1215, 1216, 1221, 1222, 2302, and 7701, employees appointed under chapter 73 or 74 of title 38 shall be employees.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 409; Pub. L. 90-486, § 4, Aug. 13, 1968, 82 Stat. 757; Pub. L. 91-375, § 6(c)(4), Aug. 12, 1970, 84 Stat. 775; Pub. L. 92-392, § 2, Aug. 19, 1972, 86 Stat. 573; Pub. L. 95-454, title VII, § 703(c)(2), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1217, 1224; Pub. L. 96-54, § 2(a)(5), (6), Aug. 14, 1979, 93 Stat. 381; Pub. L. 99-335, title II, § 207(a), June 6, 1986, 100 Stat. 594; Pub. L. 99-638, § 2(b)(1), Nov. 10, 1986, 100 Stat. 3536; Pub. L. 101-508, title VII, § 7202(b), Nov. 5, 1990, 104 Stat. 1388-335; Pub. L. 103-3, title II, § 201(b), Feb. 5, 1993, 107 Stat. 23; Pub. L. 103-424, § 7, Oct. 29, 1994, 108 Stat. 4364; Pub. L. 104-201, div. A, title III, § 370(b), Sept. 23, 1996, 110 Stat. 2499; Pub. L. 105-85, div. B, title XXVIII, § 2871(c)(2), Nov. 18, 1997, 111 Stat. 2015; Pub. L. 109-435, title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242; Pub. L. 113-66, div. A, title VI, § 642, Dec. 26, 2013, 127 Stat. 787.)