



U.S. OFFICE OF SPECIAL COUNSEL

Policy Statement on Stays of Personnel Actions

The U.S. Office of Special Counsel (OSC) may seek stays of personnel actions in complaints alleging prohibited personnel practices or other prohibited activities.

Stay Criteria

Generally, OSC may consider requesting a stay of a personnel action against an employee from an agency or from the Merit Systems Protection Board (MSPB) when: (1) OSC has reasonable grounds to believe that a personnel action that was taken or will be taken constitutes a prohibited personnel practice; and (2) absent a stay, the employee will be subjected to immediate and substantial harm, such as removal, suspension for more than 14 days, or geographic reassignment. "Reasonable grounds" means sufficient evidence for a reasonable person, with the same information and knowledge of the applicable law, to believe that a prohibited personnel practice has been or will be committed. Because a stay is designed to provide OSC with time to conduct an investigation, a stay may be granted on the basis of preliminary information.

In addition, the Special Counsel, in his or her sole discretion, may petition the MSPB to stay a personnel action if it would be appropriate and consistent with OSC's statutory mission. An agency also may, in its own discretion, decide to stay a personnel action pending an OSC investigation.

Stay Procedure

At any time, a complainant may request a stay of a personnel action, or the investigation itself may uncover facts that suggest that a stay is warranted. In such circumstances, OSC will promptly review the file based on the above criteria. After reviewing the relevant information, the Associate Special Counsel, or an appropriate designee, will decide whether to seek a stay in the case. OSC will inform the complainant of the decision as soon as practicable. If OSC decides to seek a stay and the agency agrees, OSC will proceed with the investigation. If, however, the agency declines to hold the personnel action at issue in abeyance for the requested time period, then OSC, with the Special Counsel's approval, may petition the MSPB for a stay, pursuant to 5 U.S.C. § 1214.

Stay Extensions

If an agency agrees to stay a personnel action, but the agreed-upon stay period ends before OSC completes its investigation, OSC may request an extension of the stay, assuming that the criteria for seeking a stay continue to exist. If the agency declines a request for an extension, OSC, with the Special Counsel's approval, may petition the MSPB for a stay, pursuant to 5 U.S.C. § 1214.

Note: This policy statement supercedes all prior statements on stays of personnel actions. The statement is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against OSC or any other individual or entity.