

## **New Law Requires Removal of Federal Law Enforcement Officers Convicted of Felonies**

The recently signed Treasury and General Government Appropriations Act, 2001 includes a provision that requires removal of a law enforcement officer who is convicted of a felony. The provision, which is in Section 639 of P.L. 106-554, amends Chapter 73 of title 5, U.S.C. to add section 7371. The new law is effective on January 20, 2001, and covers only convictions that occur after that date. The verbatim text of the law follows this summary of its key concepts:

### ***Who***

The law uses the definitions of “law enforcement officer” found in 5 USC 8331(20) or 5 USC 8401(17).

### ***What***

The Officer must be removed from holding a law enforcement position, but need not be removed from Federal service if the agency can effect a reassignment within the required time frame, and wants to do so. The law specifically “does not prohibit the employment of any individual in any position other than that of a law enforcement officer.” The law does not require an agency to cancel or delay a removal it was taking or had taken under other provisions, so long as the employee is out of the law enforcement position by the required date.

### ***When***

The agency must remove the employee from the law enforcement position on the last day of the first full pay period after the agency receives notice of the felony conviction. It will be critical that the offices within your agency that are likely to receive such notice understand the significance, and know to whom they must transmit that information, or what other steps they are expected to take.

### ***How***

The new law streamlines the procedures that agencies will follow if one of their law enforcement officers receives a felony conviction. The 30-day advance notice applicable to adverse actions explicitly does not apply. The employee will still get written notice of the impending removal no later than 5 days after the agency has notice of the conviction. The employee will also have an opportunity to reply, the right to be represented by an attorney or other representative, and the right to a written decision letter. However, reply and appeal rights are limited to whether: (A) the employee is a law enforcement officer; (B) the employee has been convicted of a felony; and, (C) the felony conviction has been overturned on appeal. Additionally, neither delay in meeting these requirements nor the filing of an appeal can delay the effective date of the removal. If an employee who has been removed under this provision is successful in having the conviction

overturned on appeal, the removal is retroactively “set aside,” and the employee is entitled to back pay.

SEC. 639. MANDATORY REMOVAL FROM EMPLOYMENT OF FEDERAL LAW ENFORCEMENT OFFICERS CONVICTED OF FELONIES.

(a) In General. --Chapter 73 of title 5, United States Code, is amended by adding after subchapter VI the following:

“SUBCHAPTER VII--MANDATORY REMOVAL FROM EMPLOYMENT OF CONVICTED LAW ENFORCEMENT OFFICERS

“§7371. Mandatory removal from employment of law enforcement officers convicted of felonies

“(a) In this section, the term--

“(1) ‘conviction notice date’ means the date on which an agency that employs a law enforcement officer has notice that the officer has been convicted of a felony that is entered by a Federal or State court, regardless of whether that conviction is appealed or is subject to appeal; and

“(2) ‘law enforcement officer’ has the meaning given that term under section 8331(20) or 8401(17).

“(b) Any law enforcement officer who is convicted of a felony shall be removed from employment as a law enforcement officer on the last day of the first applicable pay period following the conviction notice date.

“(c)(1) This section does not prohibit the removal of an individual from employment as a law enforcement officer before a conviction notice date if the removal is properly effected other than under this section.

“(2) This section does not prohibit the employment of any individual in any position other than that of a law enforcement officer.

“(d) If the conviction is overturned on appeal, the removal shall be set aside retroactively to the date on which the removal occurred, with back pay under section 5596 for the period during which the removal was in effect, unless the removal was properly effected other than under this section.

“(e)(1) If removal is required under this section, the agency shall deliver written notice to the employee as soon as practicable, and not later than 5 calendar days after the conviction notice date. The notice shall include a description of the specific reasons for the removal, the date of removal, and the procedures made applicable under paragraph (2).

“(2) The procedures under section 7513 (b) (2), (3), and (4), (c), (d), and (e) shall apply to any removal under this section. The employee may use the procedures to contest or appeal a removal, but only with respect to whether--

“(A) the employee is a law enforcement officer;

“(B) the employee was convicted of a felony; or

“(C) the conviction was overturned on appeal.

“(3) A removal required under this section shall occur on the date specified in subsection (b) regardless of whether the notice required under paragraph (1) of this subsection and the procedures made applicable under paragraph (2) of this subsection have been provided or completed by that date.”.

(b) Technical and Conforming Amendment.--The table of sections for chapter 73 of title 5, United States Code, is amended by adding after the item relating to section 7363 the following:

“SUBCHAPTER VII--MANDATORY REMOVAL FROM EMPLOYMENT OF LAW ENFORCEMENT OFFICERS

“7371. Mandatory removal from employment of law enforcement officers convicted of felonies.”.

(c) Effective Date.--The amendments made by this section shall take effect 30 days after the date of enactment of this Act and shall apply to any conviction of a felony entered by a Federal or State court on or after