



Billing Code: 4510-04

DEPARTMENT OF LABOR

Office of the Secretary

Procedures for Appointment of Administrative Law Judges for the Department of Labor

SUBJECT: Secretary's Order 07-2018

1. Purpose. To provide for transparent and consistent processes by which the Secretary of Labor shall select and appoint individuals to be Administrative Law Judges (ALJs) within the Department of Labor (DOL or Department).

2. Authorities and Directives Affected.

A. Authorities. This Order is issued pursuant to the following authorities:

- i. U.S. Const. art. II, § 2, cl. 2;
- ii. 5 U.S.C. § 3105;
- iii. 5 CFR §§ 6.2-6.4, 6.8;
- iv. Executive Order Excepting Administrative Law Judges from the Competitive Service (July 10, 2018).

B. Directives Affected. This Order does not affect the authorities and responsibilities assigned by any other Secretary's Order or DLMS 10-100-205.

3. Background. The Secretary has the authority and responsibility to appoint the Department's ALJs. These appointments should be made through a transparent and consistent process. Accordingly, this Order establishes procedures by which these appointments shall be made.

4. Responsibilities.

- A. The Assistant Secretary for Administration and Management, in consultation with the Deputy Secretary, is assigned responsibility for issuing written guidance, as necessary, to implement this Order.
- B. The Solicitor of Labor is responsible for providing legal advice to DOL on all matters arising in the implementation and administration of this Order.

5. Procedure. The following procedures shall apply to the selection and appointment of ALJs after the date of this Order:

- A. A notice of vacancy and solicitation of applications shall be posted in the Federal Register and/or on the ALJ website or other appropriate location for public notice. The vacancy shall be held open for a minimum of thirty days, during which applications shall be accepted, and can be continuous, if desired. The notice shall specify: the minimum criteria for appointment; the documentation an applicant must submit for consideration; the deadline, if any, by which such documentation must be submitted; and the email address and/or physical address where documentation may be submitted.
- B. Applications will be directed to the Office of Executive Resources (OER) within the Office of the Assistant Secretary for Administration and Management (OASAM) to be screened for whether an applicant has submitted all required documentation and meets the minimal qualifications for the position.
- C. OER will deliver qualified applications to an interview panel consisting of the Department's Chief Administrative Law Judge, Chief Human Capital Officer, the Assistant Secretary for Policy, and a Member of the Employees' Compensation Appeals Board (ECAB). If any of the positions required for the review panel are

vacant, the Secretary will select an alternative from the members of the Department's Senior Executive Service (SES). The Department's Director for the Office of Executive Resources, or designee, shall be present for each meeting of the panel.

- D. The interview panel or their designees will review and rank the qualified applications taking into account needs of the agency. The panel will then interview the top-ranked candidates for the open position(s) and forward their recommended candidates to the Deputy Secretary.
- E. The Deputy Secretary in consultation with a career ethics attorney from the Office of the Solicitor will provide the Secretary with the recommended candidate(s) for appointment as well as resumes of the other top-ranked candidates interviewed but not recommended.
- F. The Secretary shall make the final decision and appointment, or may instead order another candidate search be completed.

6. Qualifications. The notice of vacancy and solicitation for application shall require the following minimum qualifications but may also contain others: a J.D. from an accredited law school; licensure and authorization to practice law under the laws of a state, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the U.S. Constitution; an "active"¹ bar status and/or membership in "good standing" for at least ten years total in at least one jurisdiction in which the applicant is admitted; seven years of relevant litigation or administrative law experience; and knowledge of statutes enforced by the Department of Labor, such as the Black Lung Benefits Act, Service Contract Act, Longshore

¹ Judicial status is acceptable in lieu of "active" status in States that prohibit sitting judges from maintaining "active" status to practice law. Being in "good standing" is acceptable in lieu of "active" status in jurisdictions where the licensing authority considers "good standing" as having a current license to practice law.

and Harbor Workers' Compensation Act, Fair Labor Standards Act, whistleblower protections enforced by the Occupational Safety and Health Administration, or knowledge of other similar laws.

A. Relevant litigation experience can include: preparing for, participating in, and/or conducting formal hearings, trials, or appeals at the federal, state, or local level; participating in settlement or plea negotiations in advance of such proceedings; hearing cases; preparing opinions; participating in or conducting arbitration, mediation, or other alternative dispute resolution.

B. Relevant administrative law experience is litigation experience in cases initiated before a governmental administrative body.

7. Appointments. Sitting ALJs and ALJ candidates selected under this Order are appointed Federal officers. Appointment under this Order shall not affect any other authority of the Secretary.

8. Privacy. This Order is subject to the applicable laws, regulations, and procedures concerning the privacy of applicants to federal government employment.

9. Exceptions. The requirements of this Order are intended to be general in nature, and accordingly shall be construed and implemented consistent with more specific requirements of any statute, Executive Order, or other legal authority governing the Department's Office of Administrative Law Judges. In the event of a conflict, the specific statute, Executive Order, or other legal authority shall govern.

10. Redelegation of Authority. Except as otherwise provided by law, all of the authorities delegated in this Order may be redelegated in order to serve the purposes of this Order.

11. Effective Date. This Order is effective immediately. This Order does not apply to ongoing ALJ hiring for which an interim procedure has been approved.

Dated: August 16, 2018.

R. Alexander Acosta,

Secretary

of

Labor.

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