

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

ICE Directive 1053.2: Mandatory Separation and Requests for Exemption for U.S. Immigration and Customs Enforcement Law Enforcement Officers

Issue Date: July 24, 2018
Effective Date: July 24, 2018
Superseded: ICE Directive 1053.1, *Exemptions from Mandatory Separation for ICE Special Agents* (May 16, 2017).
Federal Enterprise Architecture Number: 306-112-002a

1. **Purpose/Background.** For the purposes of federal retirement benefits, by statute, covered federal employees classified as law enforcement officers (LEOs) are subject to mandatory separation based on age and length of service.¹ This Directive and accompanying Standard Operating Procedure (SOP) establish U.S. Immigration and Customs Enforcement's (ICE) policy and procedures regarding mandatory separation and requests for exemption for ICE LEOs.

2. **Policy.** It is ICE policy to comply with the laws and regulations governing federal retirement mandatory separation provisions for LEOs. Employees serving in a LEO position are subject to mandatory separation, while employees with prior LEO service who are no longer serving in a LEO position are not subject to mandatory separation. Mandatory separation for LEOs is generally 57 years of age, or if over the age of 57, when the employee completes 20 years of law enforcement service.² ICE will consider requests for exemption from mandatory separation for LEOs when it is determined to be in the public interest and based on ICE mission needs. An exemption from mandatory separation is not an entitlement. Exemptions from mandatory separation that are sought by a LEO solely on the desire to remain employed are not permitted and will not be approved.

- 2.1. **Mandatory Separation.** A LEO is considered to have reached his or her respective mandatory separation date on the day before his or her 57th birthday, or the date he or she completes 20 years of creditable LEO service³, if over age 57. If a LEO's birthday falls on the first day of the month, the LEO will be considered to have reached age 57 on the last day of the previous month.

The Office of Human Capital (OHC) will notify LEOs in writing of their date of

¹ For retirement purposes, most federal employees are covered under the Civil Service Retirement System (CSRS), if hired before 1984, or the Federal Employee Retirement System (FERS), if hired in 1984 or later.

² Title 5 United States Code (U.S.C) §§ 8335(b), 8336(c), 8412(d), and 8425(b).

³ An employee's retirement service computation date reflects service that is creditable toward his or her eligibility to retire. See Office of Personnel Management (OPM), *CSRS and FERS Handbook for Personnel and Payroll Offices*.

mandatory separation at least 60 days before that date to initiate a personnel action. A personnel action to separate the LEO is not effective, without the consent of the LEO, until the last day of the month in which the 60-day notice expires. LEOs must complete appropriate retirement actions subject to this Directive, including the completion of an application for retirement.

- 2.2. Exemptions from Mandatory Separation.** An exemption from mandatory separation is a discretionary determination that must be approved by the LEO's respective ICE Deputy Director, Executive Associate Director (EAD) of Homeland Security Investigations (HSI), Enforcement and Removal Operations (ERO), or Management and Administration (M&A), or the Associate Director (AD) of the Office of Professional Responsibility (OPR). The LEO's performance and conduct history will be taken into consideration when considering all exemption requests from mandatory separation.

Supervisors must submit a complete exemption request package with pertinent and required information, to include a medical certificate, for approval through their chain of command.⁴ Exemption requests for LEOs who would not serve beyond the age of 60 must be approved by the ICE Deputy Director, EAD of HSI, ERO, or M&A, or the AD of OPR; and final approval and personnel action processing must be completed by the ICE Chief Human Capital Officer (CHCO). Exemption requests for LEOs who would serve beyond the age of 60 must be approved and processed by the ICE CHCO and forwarded to the DHS CHCO for approval by the Office of Personnel Management (OPM) or the President.⁵ The length of time permitted for employees serving beyond age 60 may not exceed one year.⁶ If another exemption from mandatory separation is desired following the completion of one year, the employee's supervisor must submit a new exemption request through his or her chain of command. Employees may not serve beyond their mandatory separation date while an exemption request is pending.

- 3. Definitions.** The following definitions apply for purposes of this Directive only.

- 3.1. Law enforcement officer (LEO).** An employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States. This definition includes a LEO who has moved to a supervisory or administrative LEO position.⁷

⁴ See Title 5 Code of Federal Regulations (C.F.R.) § 831.502(d), as well as accompanying SOP for specific list of required information. Supervisors will work with applicable LEOs to appropriately complete exemption request packages.

⁵ If ICE wishes to secure exemptions beyond the age of 60 for employees covered under exemptions under the CSRS, these requests must be submitted to OPM for approval. Unlike CSRS, only the President may approve exemptions for employees covered under the FERS who are beyond the age of 60. Therefore, all requests for these exemptions will be submitted to DHS for further coordination.

⁶ 5 C.F.R. § 831.502(d)(iii).

⁷ 5 C.F.R. §§ 831.902 and 842.802.

3.2. Mandatory separation. A personnel action effected by ICE to separate an employee from a LEO position, with prior notice. Mandatory separation is not an adverse action or a removal action.⁸

3.3. Medical certificate. A document signed by the LEO's personal physician that attests to the employee's fitness for duty to remain employed as a LEO. The medical certification must contain an attestation that the employee is fit for continued duty based upon a review of the LEO's position description.

4. Responsibilities.

4.1. The ICE Deputy Director, Executive Associate Directors of HSI, ERO, and M&A, and Associate Director of OPR are responsible for ensuring compliance with this Directive and accompanying SOP, and approving or denying exemption requests from mandatory separation for LEOs within their Directorate or Program Office.

4.2. The ICE CHCO is responsible for:

- 1) Notifying LEOs in writing of the date of their mandatory separation at least 60 days before that date and ensuring that LEOs applying for retirement meet the eligibility requirements and are provided appropriate guidance regarding retirement and benefits;
- 2) Ensuring that retirement paperwork, including applications for retirement, are properly completed, with all appropriate documentation provided to OPM;
- 3) Reviewing and evaluating all Directorate and Program Office approved requests for exemption from mandatory separation to ensure that all statutory, regulatory, personnel, and DHS requirements have been met;
- 4) Providing and reviewing employee performance and conduct information and providing derogatory information discovered to the Directorate or Program Office, if necessary;
- 5) Finalizing approvals for exemption requests for LEOs who would not serve beyond 60 years of age, following approval by Directorates and Program Offices;
- 6) Processing and coordinating exemption requests for LEOs who would serve beyond the age of 60 with the DHS CHCO; and
- 7) Processing appropriate personnel actions following final approval of exemption requests.

⁸ 5 C.F.R Parts 752 and 359.

4.3. ICE Supervisors are responsible for:

- 1) Preparing, reviewing, approving, and submitting exemption request packages through their chain of command; and
- 2) Submitting ICE Deputy Director, HSI, ERO, and M&A EAD, and OPR AD approved mandatory separation exemption packages to OHC no less than 60 days prior to the effective date of the mandatory separation action for employees who would not serve beyond the age of 60 and no less than 90 days for employees who would serve beyond the age of 60.

4.4. LEOs are responsible for:

- 1) Maintaining awareness of their date of mandatory separation, as well as all applicable retirement regulations and benefits;
- 2) Completing necessary retirement actions, including:
 - a. Completing and submitting appropriate retirement paperwork, to include an application for retirement, in a timely manner;⁹
 - b. Ensuring that any military deposit transactions that they wish to make are completed before they separate from federal service;
 - c. Contacting OHC to understand their options regarding any civilian deposits/redeposits that they are eligible to make; and
 - d. Ensuring that all periods of service are represented in their Official Personnel File (OPF); and
- 3) Providing pertinent and required information to their supervisor for completion of an exemption request package, if an exemption from mandatory separation is being sought.

5. Procedures/Requirements. See the *Requesting Exemption from Mandatory Separation* Standard Operating Procedure (SOP) for implementing procedures and requirements.

⁹ OHC will ensure that LEOs have access to appropriate retirement related documents for completion and submission.

6. **Recordkeeping.** Any personnel records generated as a result of this Directive will be stored in the electronic OPF system, which OHC maintains. Requests for exemption from mandatory separation will be maintained by OHC and filed as part of the OPF. The OPF will be retained in accordance with General Records Schedule 2.2, item 040, and destroyed when survivor or retirement claims are adjudicated, or when records are 129 years old, whichever is sooner. Longer retention is authorized if required for business use.

7. **Authorities/References.**

7.1. Title 5 United States Code (U.S.C.) §§ 8331 and 8401, *Definitions for Civil Service Retirement System (CSRS) and Definitions for Federal Employees Retirement System (FERS)* (2018).

7.2. 5 U.S.C. §§ 8335 and 8425, *Mandatory Separation for CSRS and Mandatory Separation for FERS* (2018).

7.3. 5 U.S.C. §§ 8336 and 8412, *Immediate Retirement for CSRS and Immediate Retirement for FERS* (2018).

7.4. Title 5, Code of Federal Regulations (C.F.R.) §§ 831.502, 831.902, 831.908, 831.909, 842.208, 842.802, 842.806, and 842.809 (2018).

7.5. 5 C.F.R Parts 752 and 359 (2018).

7.6. DHS Delegation 03000, *Delegation for Human Capital and Human Resources* (June 5, 2012).

7.7. DHS Directive 257-02, Revision 01, *Mandatory Separation for Law Enforcement Officers and Firefighters* (June 14, 2016).

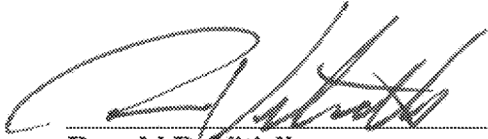
7.8. DHS Instruction 257-02-001, *Mandatory Separation for Law Enforcement Officers and Firefighters* (June 30, 2016).

7.9. Office of Personnel Management (OPM), *CSRS and FERS Handbook for Personnel and Payroll Offices*, including Chapter 46, *Special Retirement Provisions for LEOs* (April 1998).

8. **Attachments.**

8.1. SOP, *Requesting Exemption from Mandatory Separation*.

9. **No Private Right.** This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or equity by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.



Ronald D. Vitiello
Acting ICE Director
U.S. Immigration and Customs Enforcement