

BY ORDER OF THE
COMMANDER

HEADQUARTERS, UNITED STATES FORCES, JAPAN
USFJ INSTRUCTION 36-25

30 June 2016



Civilian Personnel

Employment of Non-US Citizen Family Members

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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RELEASABILITY: There are no releasability restrictions on this publication

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Certified by: USFJ/J1 (COL Joel Alexander)

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PURPOSE: This publication establishes United States Forces, Japan (USFJ) policy for hiring non-US citizen family members of DoD personnel in appropriated fund positions by US forces in Japan.

SUMMARY OF REVISIONS: The series of this publication has been changed to 36, the format revised to current requirements, detailed coverage exclusions added, and references have been updated.

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1. **Scope.** Applicable to all U. S. armed forces and civilian component personnel under the jurisdiction of the Department of Defense whose duty station is in Japan. This instruction covers the employment and compensation of only those non-US citizens who are family members of Department of Defense personnel in Japan under provisions of the US-Japan Status of Forces Agreement (SOFA). A family member means a dependent as defined in Article I(c) of the SOFA, subject to the additional restrictions imposed by DOD Instruction 1400.23.

1.1. This instruction does not cover current Master Labor Contract (MLC) or Indirect Hire Agreement (IHA) employees who subsequently gain SOFA status as family members of DOD personnel. Such employees will retain Local National (LN) employment status until employment is terminated, in order to avoid penalizing the employee for becoming a US family member, as the

employee would have a vested interest in certain benefits under the LN employment system. Should the family member be hired in an appropriated fund position after gaining SOFA status, the provisions become applicable.

1.2. These provisions do not apply to non-competitive service positions of the Department of Defense Dependent Schools (e.g., administrators, teachers, counselors), positions with intelligence as the primary function, journeyman-level positions covered by mandatory mobility agreements, or family members of locally hired civilian employees.

2. **General.** US Forces, Japan policy is to provide fair and equitable employment opportunities regardless of national origin or citizenship. Procedures contained herein are provided to allow component services to employ and compensate non-US citizen family members in a system that is comparable to the US citizen family member employment system.

3. **Background.**

3.1. The Master Labor Contract (MLC) does not permit hiring of SOFA personnel. Compensation under the General Schedule and Federal Wage System prevailing rate schedules authorized by 5 USC 5102(c)(11) and 5 USC 5342(b)(2), respectively, does not apply to non-US citizens employed in foreign areas. However, DOD Instruction 1400.23, Employment of Family Members of US Armed Forces Personnel and Civilian Employees Stationed in Foreign Areas, provides for family member preference in employment without regard to US citizenship.

3.2. This instruction provides the means for furnishing an appropriate employment/-compensation system to allow appropriated fund employment of non-US citizen family members in support of DOD Instruction 1400.23 and to prevent discrimination in hiring and compensation. This policy has been approved by the US Pacific Command Joint Labor Policy Committee (USPACOM JLPC), which is authorized to approve such an employment/compensation system in accordance with USCINCPACINST 12200.3F.

4. **Appointment.**

4.1. Non-US citizen family members compete for employment with US citizen employees and applicants. They are subject to the same restrictions on placement as specified in Office of Personnel Management and agency regulations on veteran's preference and nepotism. Additionally, non-US citizen family members will not be employed in sensitive positions or those positions subject to security clearance requirements that could not be met by non-US citizens.

4.2. Employment will be documented on Standard Form 50, Notification of Personnel Action. A sample is at Attachment 1. The appointment authorities to be cited on personnel actions (to include pay) are Schedule A, 213.3106(b)(6) and the 22 July 1988 approval letter of the USPACOM JLPC.

4.3. Hiring preference of non-US citizen family members shall be as specified in DOD Instruction 1400.23. Service under appointments subject to non-US citizen procedures contained herein is creditable under the guidelines of Executive Order 12362 if the employee subsequently becomes a US citizen.

4.4. Non-US citizen family members will be in separate RIF competitive levels from US citizen family members. Those on indefinite appointments are in tenure group 3 for RIF

purposes. Those with appointments limited to one year may be terminated with the same amount of notice accorded temporary US citizen personnel.

5. Benefits.

5.1. Non-US citizens are excluded by law from coverage by federal life insurance and health benefits programs.

5.2. Eligibility for Social Security and US retirement system coverage varies by type of appointment and whether the non-US citizen has resident alien status. Those employees who have resident alien status (green cards) are subject to Social Security coverage. If they are on indefinite appointments they are also subject to US retirement system coverage. If they do not have resident alien status, they are not covered by either of these systems.

5.3. Worker's compensation programs for occupational injury or disease apply to non-US citizens employed in the Federal service regardless of resident alien status.

5.4. Regarding taxation, it shall be the individual employee's responsibility to determine personal liability under US and Japanese tax laws.

6. Compensation.

6.1. The pay system for non-US citizen family member white collar and blue collar workers is described at Attachment 2. Also at Attachment 2 is the rationale for developing this system. Classification will be done in accordance with standards used for US citizen appropriated fund employees.

6.2. Within grade increases (including quality increases) will be granted to white collar employees in the same manner as they are granted to General Schedule employees. Blue collar employees will be granted within grade increases as if they were Federal Wage System employees.

6.3. Although non-US citizen employees are not covered by legal provisions on Federal service premium pay, allowance and leave, OPM and agency regulations will be administratively extended to SOFA member non-US citizen employees.

6.4. Non-US citizen employees will be rated under the agency's performance management system and may be granted performance awards as provided by OPM and agency regulations.

7. Employee Relations.

7.1. Unless non-US citizen family member employees are also veterans with more than one year of current continuous service in the same or similar positions, they are not covered by Federal service adverse action procedures.

7.2. These employees are covered by agency/service command disciplinary and grievance procedures for appropriated fund employees, unless otherwise excluded by agency/service command issuances.

8. References.

8.1. DOD Instruction 1400.23, 12 May 1989, subject: Employment of Family Members of Active Duty Military Members and Civilian Employees Stationed in Foreign Areas.

8.2. DOD Directive 5120.39, 24 April 1980, subject: Department of Defense Wage Fixing Authority Appropriated Fund Compensation.

8.3. DOD 1400.25-M, December 1996, subject: Department of Defense Civilian Personnel Manual.

8.4. USCINCPAC Instruction 12200.3F, 14 Aug 98, subject: Personnel Administration for U.S. Forces Foreign National (FN) Civilian Employees in U. S. Pacific Command (USPACOM) Foreign Areas.



CHARLES G. CHIAROTTI
Major General, USMC
Deputy Commander

Attachments:

1. Sample Notification of Personnel Action (SF-50)
2. Compensation System for Non-US Citizen Family Members

DISTRIBUTION: A Plus

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Director for Manpower, Personnel and Support (J1)
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Commander, US Marine Forces, Japan
Foreign Labor Office
Unit 35009
FPO AP 96373-5009

Commander, AAFES-PACRIM
Unit 35163
APO AP 96378-5163

Attachment 1

Standard Form 50-B (EG)
Rev. 7/91
U.S. Office of Personnel Management
FPM Supp. 296-33, Subch. 4

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle) JONES, CONSUELA L.		2. Social Security Number 999-99-9999	3. Date of Birth 2-25-59	4. Effective Date 9-14-02
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FIRST ACTION		SECOND ACTION		
5-A. Code 170	5-B. Nature of Action EXCEPTED APPOINTMENT	6-A. Code	6-B. Nature of Action	
5-C. Code XZM	5-D. Legal Authority SCH A 213.3106 (B)(6)	6-C. Code	6-D. Legal Authority	
5-E. Code	5-F. Legal Authority	6-E. Code	6-F. Legal Authority	

7. FROM: Position Title and Number	15. TO: Position Title and Number SECRETARY (OFFICE AUTOMATION) POSITION NO. 123
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8. Pay Plan LGS	9. Occ. Code 318	10. Grade/Level 04	11. Step/Rate 1	12. Total Salary/Award	13. Pay Basis PA
12A. Basic Pay	12B. Locality Adj.	12C. Adj. Basic Pay	12D. Other Pay	20A. Basic Pay	20B. Locality Adj.
			20C. Adj. Basic Pay	20D. Other Pay	

14. Name and Location of Position's Organization	22. Name and Location of Position's Organization HO US FORCES, JAPAN DIRECTOR, MANPOWER, PERSONNEL & SUPPORT/J1 APO AP 96328
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EMPLOYEE DATA			
23. Veterans Preference I 1 - None 2 - 5-Point 3 - 10-Point/Disability 4 - 10-Point/Compensable 5 - 10-Point/Other 6 - 10-Point/Compensable/30%	24. Tenure 3 0 - None 1 - Permanent 2 - Conditional 3 - Indefinite	25. Agency Use	26. Veterans Preference for RIF <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
27. FEGLI A INELIGIBLE	28. Annuitant Indicator	29. Pay Rate Determinant	
30. Retirement Plan K	31. Service Comp. Date (Leave) 9-14-02	32. Work Schedule F	33. Part-Time Hours Per Pay Period

POSITION DATA			
34. Position Occupied 2 1 - Competitive Service 2 - Excepted Service 3 - SES General 4 - SES Career Reserved	35. FLSA Category E E - Exempt N - Nonexempt	36. Appropriation Code	37. Bargaining Unit Status
38. Duty Station Code	38. Duty Station (City - County - State or Overseas Location) YOKOTA AB, JAPAN		

40. AGENCY DATA	41.	42.	43.	44.
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45. Remarks
 Employment as non-US citizen family member authorized IAW PACOM Joint Labor Policy Committee (JLPC) letter dated 22 July 1988.
 Employment under this appointment will not extend longer than two months following the transfer from the area or separation of the appointee's sponsor.
 Service under this appointment will be creditable under EO 12362 if employee obtains U.S. citizenship.

46. Employing Department or Agency			50. Signature/Authentication and Title of Approving Official	
47. Agency Code	48. Personnel Office ID	49. Approval Date		

Attachment 2

COMPENSATION SYSTEM FOR NON-US CITIZEN FAMILY MEMBERS

1. Procedures.

1.1. Positions will be classified according to the applicable US citizen white collar or blue-collar wage schedules.

1.2. Positions will be assigned job series and grade levels using criteria in respective US classification standards. Where 2-character designations are required by service's automated personnel data systems, appropriate codes will be assigned.

1.3. Employees will be paid in dollars at the corresponding rates of pay reflected on the US pay schedules.

2. Rationale.

2.1. The US-Japan Status of Forces Agreement (SOFA), Article I, defines dependents without using citizenship as a criterion in determining whether such individuals come under the SOFA umbrella. They are not considered permanent residents of Japan and receive SOFA status by virtue of presence in country with the US Forces. They are not considered Third Country Nationals (TCNs) within the intent of USCINCPAC Instruction 12200.3F as they have not been imported to satisfy local labor requirements. Non-US citizen employees of Non-appropriated Fund Instrumentalities (NAFIs) in Japan are currently covered under a US-style employment/compensation system and it is believed that use of a US-style system is the most equitable for non-US citizen employees of appropriated fund activities.

2.2. Establishment of a separate direct hire or several third country national systems in Japan would be administratively, economically and politically undesirable. Coverage of SOFA members under more than one type of compensation plan depending upon US or non-US citizenship would invite pay level comparisons and could work to preclude equitable employment opportunities for certain employees based upon cost considerations. Further, SOFA members are generally exempted from payment of local income tax on "US-sourced" income, which would provide an unjustified economic windfall if covered under the LN compensation system, and certain LN benefits duplicate those provided to family members of military members and civilians under the overall US overseas employment/compensation plan.

2.3. Non-US citizen family members are part of the US community and generally they and their sponsors desire to be treated as part of that community. The subject employees are generally attempting to integrate themselves into the US community and to require the payment of LN wages would thwart this transition.