

OPM urges agencies to review age limits for new hires

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The Office of Personnel Management has directed federal agencies to review age limits for job vacancies, after the Merit Systems Protection Board ruled such policies for new hires could violate the preferential rights of veterans.

In a memo released on Wednesday, OPM Director John Berry said job seekers with veterans preference can apply for vacancies, regardless of whether they meet the age requirements for those jobs. Agencies must review their age requirements to determine whether they are necessary to performing the specified jobs. If not, the agencies must waive them for veterans, according to the memo.

The memo says OPM will follow through on a 2008 Merit System Protections Board decision that found that the State Department violated the veterans preference rights of Robert Isabella when it denied his application to join the Diplomatic Security Service based on his age. State requires such agents to be appointed before their 37th birthday. The court ruled the policy was not tied to the conditions of the job, but was intended to ensure agents would qualify for an enhanced retirement annuity, which requires them to work at the agency for 20 years before reaching the mandatory retirement age of 57.

Berry said every agency must review jobs with age policies, such as law enforcement and air traffic control, to "determine whether age is essential to the performance of the position," and waive the requirement for qualified veterans if it is not essential. The mandatory retirement age for those who are admitted through a waiver would be higher because "it will be reached after 20 years of law enforcement officer service for the entitlement to an immediate enhanced annuity," the memo said.

Steven Herrick, one of the attorneys who represented Isabella, said the language in OPM's memo -- "whether age is essential to the performance of the position" -- was too vague and should have made clear that agencies must specifically review whether age requirements for new hires are necessary.

"The guidance that OPM has given here is just going to create additional confusion on this point," Herrick said, adding that the MSPB ruling gives clear directions to agencies about age requirements.