

## Legal Sidebar

# President Trump Freezes Federal Civil Service Hiring

01/26/2017

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On Monday, January 23, President Trump issued a [memorandum](#) that suspends the hiring of civilian employees in the executive branch. The Director of the Office of Management and Budget (OMB), in consultation with the Director of the Office of Personnel Management (OPM), is instructed to recommend a plan within 90 days to reduce the size of the federal workforce by way of attrition. The order will expire upon the actual implementation of the OMB plan, though the memorandum does not specify a time frame for when such implementation must occur. On Wednesday, January 25, OMB issued explanatory guidance to agencies on the implementation of the freeze. It [stated](#) that workers offered a job on or before January 22, with a start date of February 22 or earlier, should enter their positions. However, those individuals whose start date is after February 22, or undetermined, may have their job offer revoked. Agency heads are given discretion whether to honor these offers.

This is not the first hiring freeze ordered by a President. In recent decades, President Jimmy Carter [instituted](#) three government-wide freezes that reduced the number of full-time positions that could be filled; President Ronald Reagan [imposed](#) a freeze that applied to all civilian employees; and following his inauguration, President George W. Bush [called for](#) some agencies to stop hiring new employees until the administration's agency heads were confirmed. The extent of the President's authority over the civil service, including over hiring decisions, stems from both statutory and constitutional provisions. Federal legislation [confers](#) on the President authority to "prescribe ... regulations for the admission of individuals into the civil service" and "ascertain the fitness of applicants as to age, health, character, knowledge, and ability for the employment sought." Article II of the Constitution vests the President with the [executive power](#) and – according to the Supreme Court – confers on him the "[administrative control](#)" of the executive branch, including the power to [remove](#) certain executive branch officials, including the heads of federal agencies. In turn, agency heads are statutorily [authorized](#) to hire and appoint employees within their agencies, subject to various legal requirements and available congressional appropriations. Although the precise scope of presidential power over federal agencies is [disputed](#), the President has generally been [understood](#) to possess authority to order agency heads to implement a hiring freeze.

Unlike some prior hiring freezes, President Trump's hiring freeze does not apply to every federal employee. The memorandum exempts military personnel, and agency heads may exclude any position they consider necessary to national security or public safety. Further, the memorandum exempts political appointees to the new administration and also permits OPM to grant exemptions to agencies where necessary. Because the order is limited to the executive branch, employees in the judicial and legislative branches are also excluded.

The order makes clear that agencies are permitted to reallocate resources to meet their highest priority needs. And the freeze does not prohibit hiring employees in situations where a hiring restriction would violate federal law. Importantly, the memorandum bars agencies from using contractors to avoid the intent of the presidential instruction – a limitation included in past government hiring freezes, though the efficacy of such restrictions have occasionally been [questioned](#).

While the President possesses a certain amount of control over the executive branch, various statutory and constitutional provisions impose important limits on the President's authority over the civil service. These statutory and constitutional parameters can set the boundary for the proper scope of any hiring freeze. For example, the [Civil Service Reform Act](#) (CSRA) provides procedural protections for federal employees – but not agency heads – who have already entered government service. The Act requires specific mechanisms for the removal of civil service employees currently serving

in the federal government, including that these employees may not be unilaterally removed by the President. In other words, once an individual qualifies as a federal employee, he may not be removed from federal employment except through the procedures outlined in the CSRA. Further, the CSRA's provision of restrictions on when federal employees may be removed bestows a constitutional [property interest](#) in those individuals' continued employment. And the [Due Process Clause](#) provides that the government [may not deprive](#) individuals of this property interest without providing certain procedures.

Another limit on the President's power to oversee the civil service is Congress's appropriation power. Congress enjoys [the power of the purse](#), which includes authority to set the amount of funding that agencies receive as well as how specific to make such appropriations. If Congress appropriates specific funds for the hiring of civil service members, and those funds have not been dispersed before a hiring freeze, for example, that freeze might contradict the terms of the appropriation. Similarly, the [Impoundment Control Act](#) obligates the President to spend appropriated funds absent a bill rescinding those funds. Without the passing of such a bill, it could be argued that a hiring freeze that prevented appropriated funds from being spent could violate the Act.

President Trump's direction to agency heads to initiate a hiring freeze provides that it does not bar hiring where a restriction would violate legal requirements. However, due in part to the size of the federal bureaucracy, the number of federal positions affected, and the variety of separate appropriations bills funding different agencies, whether specific applications of the hiring freeze to particular individuals could conflict with these limits is unclear.

A 1981 case from the U.S. Court of Appeals for the District of Columbia Circuit, reviewing a challenge to President Reagan's hiring freeze, illustrates some of the practical limits to presidential authority to institute a hiring freeze. In [National Treasury Employees Union v. Reagan](#), a class of plaintiffs who had been hired before the freeze went into effect challenged the presidential action as unlawful. The court held that while most of the plaintiffs were "appointees" to their positions, because they had not entered into duty yet, they had not become "employees" who received federal statutory employment protections. On the other hand, a subset of plaintiffs *had* entered into duty and thus qualified as employees that received statutory protections. As to those plaintiffs, the court held, the revocation of their employment was improper because it did not comply with federal civil service laws.

Likewise, the court held that the class of plaintiffs who had not become employees under the civil service laws could not claim a legitimate entitlement to a property interest in their employment and therefore could not prove a due process violation (the court did not address whether the individual plaintiffs who had entered into duty could claim a cognizable due process violation). In addition, the court examined the claim that the hiring freeze violated a specific appropriations requirement, which directed OMB to provide the Veterans Administration with particular funds for personnel. The court held that the hiring freeze was invalid to the extent it caused a shortfall in the required amount of agency employees. Finally, the court remanded the plaintiffs' argument that the hiring freeze violated the [Impoundment Control Act](#) to the district court because the claim was raised for the first time at the appellate level, but that underlying claim was not definitively resolved.

Aside from the requirements of the Constitution, the D.C. Circuit Court's ruling in *National Treasury Employees Union* makes plain that Congress enjoys substantial authority vis-a-vis the executive branch to control the size of the civil service. Importantly, enacted legislation that sets the amount of required funding for employees or provides a framework for when and how employees may be removed from service may shape and limit the President's authority to institute a hiring freeze. Legislative decisions in these matters thus determine the size, scope, and nature of the federal workforce.