insights & analyses for Federal human capital management

Issues of Merit

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Understanding Favoritism

MSPB takes a closer look at what the concept of favoritism means.

The Federal civil service was once a system of patronage in which people were granted jobs largely on the basis of political loyalty. Following the assassination of President James Garfield by a frustrated political job seeker, Congress passed the Pendleton Civil Service Reform Act in 1883 to ensure that Federal jobs would be filled on the basis of merit rather than political affiliation or other non-merit reasons. In 1978, Congress codified the merit system principles (MSPs) and prohibited personnel practices (PPPs) in 5 U.S.C. § 2301 and 5 U.S.C. § 2302 to clarify expectations for a merit-based Federal civil service.

The MSPs and PPPs state what should be considered when making personnel decisions (e.g., "relative ability, knowledge and skills") and what should *not* be considered (e.g., "political affiliation, race, color, religion, national origin, sex, marital status, age," disability). They indicate that basing these decisions on personal favoritism is not proper. However, research by the Merit Systems Protection Board (MSPB) indicates that many employees perceive favoritism to be a key barrier to achieving merit in personnel decisions.

Favoritism occurs when human capital decisions are based on personal feelings and/or relationships and NOT on objective criteria, such as assessments of ability, knowledge, and skills. Since the MSPs do not define the term favoritism, we base our definition on the sixth PPP, which involves the granting of any preference or advantage not authorized by law, rule, or regulation to:

(1) any employee, such as in selection for work assignments, promotions, telework, flexible work schedules, reassignments, geographic relocations, training or developmental opportunities, pay, performance appraisal ratings, awards, discipline, retention efforts, OR

(2) any applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

In other words, favoritism occurs when a selecting official or supervisor grants a benefit to one applicant or employee but not another similarly situated applicant or employee for reasons other than a legitimate or merit-based reason. Examples of favoritism might include:

- A supervisor giving a favorite employee an on-the-spot cash award, but not to another equally deserving employee who performed the same work;
- A supervisor granting a career ladder

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The MSPB Office of Policy and Evaluation conducts studies to assess the health of Federal merit systems and to ensure they are free from prohibited personnel practices.

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We offer insights and analyses on topics related to Federal human capital management, particularly findings and recommendations from our independent research.

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DIRECTOR'S PERSPECTIVE

Engaging Federal Employees in Troubled Times

Go back to the basics to improve the connection between employees and the organization.

I think it is fair to say that the Federal workforce is probably feeling rather dejected these days. As elected officials fight over plans to reduce the deficit and balance the budget, Federal employees are, not surprisingly, stuck in the middle. Their annual pay increases have been frozen for at least two years. Agencies have been instructed to reduce the money spent on employee performance awards. There are discussions about whether employees should pay a larger share of their retirement benefits and whether the retirement plan should be restructured completely. There are proposals to shrink the size of the workforce which could result in layoffs or at least "doing more with less."

These are issues that can have a direct impact on how employees feel about their jobs and in particular, on retention, employee engagement, and performance. Federal managers have the unenviable task of managing the workforce and keeping employees engaged and centered on the mission of the organization while all of this is going on around them. That is not an easy job, but there are some strategies that may help.

First, we have to understand what drives employee engagement. Yes, employees value extrinsic motivators such as pay, benefits, and job security. These factors play an important role in employees making the choice to stay with the organization and to perform as expected. Engagement, however, comes from a heightened connection between employees and their work, their organization, or the people they work for or with that causes them to put forth greater discretionary effort and produce better results for the organization. Research indicates that highly-engaged employees are likely to put up with short periods of dissatisfaction with things like pay and benefits and still remain committed to the organization and its mission.

So how do managers engage employees? In our 2008 report, *The Power of Federal Employee Engagement*, MSPB identified six issues that are important to fostering employee engagement. They are: pride in one's work or workplace; satisfaction with leadership; opportunity to perform well at work; satisfaction with recognition received; prospect for future personal and professional growth; and a positive work environment with some focus on teamwork. Obviously, some of these issues will be difficult to deal with when there are limited resources available, such as money for awards and training. I recommend identifying 2-3 strategies that don't rely on monetary resources but improve the connection between employees and their organization.

For instance, make work meaningful. Most people join the Government because they want to do important work that has broad impact. Missions have not changed. What the Government does is still important, so focus your employees on that. Communicate

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Engaging Employees

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regularly with employees to discuss organizational goals and strategies. Clearly link their performance goals with organizational goals so employees have a line of sight between what they do and the mission of the agency. Keep employees informed of organizational progress and discuss regularly how you and your employees can demonstrate the positive impact you have on the American public. Creating that pride in one's work and workplace will keep employees connected to and engaged in the mission.

Treating employees as business partners should also help further employee engagement. Let them know you're all in this together, and you need their help to get through these difficult times. Empowering them will help create a positive work environment with a focus on teamwork. Give employees autonomy and authority to make decisions that impact their work. Solicit and use their input to improve office processes and products. Create a safe environment to express their opinions, and allow employees to make honest mistakes. In return for these flexibilities, hold employees accountable for the outcomes of their work.

Another strategy to further engagement is to recognize employees' contributions. Most people think this means giving employees monetary awards, but that is not the only way to reward performance. Recognition for one's work is a fundamental human need and strategies to do this can include simple words of praise, time off for good work, special assignments, increased autonomy, or public recognition. Be honest with employees that you may not be able to provide monetary awards; but in exchange, be sure to let them know in some way when they've done a good job.

The reality of today's environment is that it is hard to keep employees engaged. They come to work striving to do something positive for the American public, and often the only feedback they receive is the negative press they read in the papers. Managers can help re-engage those employees by focusing on the intrinsic motivators that make employees want to come to work. For additional strategies, refer to our report *The Power of Employee Engagement*.❖

Director, Policy and Evaluation

HR Professionals: Here Is Your Opportunity to Speak Out!

Fair and Open Competition Survey

Attracting a high-quality workforce is vital for Federal agencies to accomplish their missions. The merit system principle of fair and open competition for filling Federal jobs [5 U.S.C. § 2301 (b)(1)] is not only a longstanding and fundamental element of Federal merit systems, but also is critical to building and maintaining a high-quality Federal workforce. As part of its statutory authority, MSPB is conducting a study on this merit principle that will include an examination of current agency practices and an analysis of how current management trends and technological advances may be altering the perception of fair and open competition among federal hiring process stakeholders.

As part of this study, MSPB is inviting Federal Human Resources (HR) Specialists and Assistants to complete a survey asking them their views on this important topic. HR Professionals have a direct view of how agency policies, practices, and procedures affect hiring outcomes and merit. The employees who participate in this survey will provide a valuable service to the entire Federal workforce by sharing their opinions on how well fair and open competition is working in the hiring process. Survey responses will identify both areas of success and areas that need improvement. We encourage all who receive this survey to complete it. Participation is voluntary and individual responses will be kept confidential. A summary report of the Governmentwide survey results will be posted on the MSPB website (www.mspb.gov/studies).

Federal Employee Affinity Groups: Helping Employees and Employers Achieve Their Goals

Federal employees join affinity groups for a variety of reasons. The most obvious reason may be to network with people who share a common interest.[1]

Networking allows members to share useful information, ranging from mission-critical knowledge to job openings. Other advantages of joining affinity groups include opportunities to join forces to advocate for shared objectives, pursue developmental experiences, and demonstrate leadership. The major affinity groups also host annual conferences that provide a variety of training and development options.

However, these groups can also provide benefits to agencies. Through the following means, employee affinity groups can help agencies build and sustain a more effective workforce that is representative of the population being served.

Increase the size, quality, and diversity of the applicant pool. By facilitating the agency's outreach into the broader community, employee affinity groups can help the agency reach and attract qualified applicants who might not otherwise be aware of or interested in applying for Federal jobs.

Assist with the development of the workforce. Employee affinity groups often offer members numerous learning opportunities. They may help with the distribution of information to agency employees and facilitate mentoring relationships and opportunities to grow as a leader by managing group events. National and regional training conferences may provide low-cost learning experiences.

Enhance the retention of high-performing employees. By providing a supportive community, employee affinity groups can help new employees acclimate to the organizational culture. For instance, through the additional developmental opportunities made available through affinity groups, employees may be more likely to feel that they are making progress in their current organization, potentially increasing their satisfaction with the organization.

Improve communication to help agencies better meet their workforce and mission needs. Agencies can use the expertise of affinity groups to become better attuned to the unique needs of the communities represented by these groups. By tapping into this expertise, agencies can improve the way they deal with customers, thereby improving how they accomplish their missions. Similarly, they can use the information to better listen to employees regarding their priorities, positioning agencies to retain and fully utilize their talents.

These contributions show that agencies can benefit from active engagement with employee affinity groups. Partnering with these groups sends the message that the agency values diversity and the perspectives that employees with different backgrounds and interests can bring to the workplace. Given the increasing diversity of the Federal workforce and the United States, it is important for agencies to recognize the value of employee affinity groups to assist with creating and sustaining a 21st century workforce. Since participation of employees in affinity groups can help agencies and employees to simultaneously achieve the goals held by employees as well as the agency, it's clear this is can be a win-win situation for everyone. ❖

[1]Although these groups tend to attract people based on similarities in terms of personal characteristics (such as gender, race/ethnicity, disability or sexual orientation), it's important to note that Federal employee affinity groups remain open to everyone, regardless of their demographics.

Federally Employed Women (FEW) and the U.S. Merit Systems Protection Board Sign Memorandum of Understanding (MOU)

On May 17, Sue Webster, President of FEW, and Susan Tsui Grundmann, Chairman of the MSPB, signed an MOU to formalize the mutually beneficial relationship between FEW and MSPB. As part of this MOU, FEW and MSPB will expand their exchange of information to enhance the accomplishment of their missions within the context of an increasingly diverse Federal workforce. A copy of the MOU can be found on the MSPB website at www.mspb.gov/contact/eeo.htm.

Religion in the Workplace: Moving Beyond Nondiscrimination and Accommodation

As the Federal workplace strives for an inclusive environment, how do we reach a "respectful pluralism" when it comes to religion?

Almost all Federal managers and employees know that discrimination on the basis of religion is prohibited, that Federal agencies must make certain accommodations for religious observances and beliefs, and that Federal agencies should avoid religious indoctrination or instruction. For example, the Office of Personnel Management (OPM) policy provides for adjustment in work schedules to support an employee's religious obligations.[1] Also, various appropriations laws prohibit expenditures on training that "contains any methods or content associated with religious or quasi-religious or new age belief systems…."[2]

Yet accommodation should not be confused with inclusion. Grudging tolerance of an employee's religion may not make that employee feel welcome. Employees who believe it necessary to leave an integral part of themselves at home—whether it is their religion, sexual orientation, or family commitments—may find it difficult to bring their best efforts and insights to work and be reluctant to pursue high-visibility roles. Also, work life and personal life are often less separable than we believe (or pretend) them to be. For example, religion may provide individuals with meaning, purpose, and inspiration in all aspects of life. Religion may also help employees understand and overcome challenges, including those that arise at work. Therefore, agency leadership, employees, and the public may be best served if agencies strive for inclusion rather than mere accommodation.

Employees who believe it necessary to leave an integral part of themselves at home...may find it difficult to bring their best efforts and insights to work

We recognize that religion is a highly personal and private matter. We recognize too that agencies and employees may be reluctant to openly discuss or acknowledge religious beliefs for fear of conflict and discord. How can agencies achieve inclusion while avoiding division? One author suggests that organizations aim for a "respectful pluralism," allowing employees to express their beliefs within boundaries that include:[3]

- Respect—coworkers and the employer may neither denigrate an employee's religion or its expression; nor engage in religious expression that denigrates others;
- Non-coercion—supervisors must refrain from using their authority, and employees must refrain from using their position, to influence another's religious beliefs;
- Neutrality—the employer must not favor or promote any particular religion; and
- Business necessity—religious expression must not unduly compromise the organization's mission or fundamental purpose.

The journey from accommodation to inclusion will not be easy, especially where religion is concerned. Agencies and employees must show respect, exercise good judgment, and establish and observe boundaries. Yet the goal—a workplace where employees can be themselves, without apology or concealment—is worth striving for. Accordingly, agency leaders might do well to ask themselves if their workplace is as open and welcoming as it should be, and whether their diversity and inclusion initiatives (and training) could use some updating and expansion. ❖

[1]U.S. Office of Personnel Management, "Adjustment of Work Schedules for Religious Observances," available via Internet as of May 2011 at http://www.opm.gov/oca/worksch/html/reli.htm.

[2]See Pub. L. 106-58, Treasury and General Government Appropriations Act of 2000, Section 625 and U.S. Office of Personnel Management, "Guidance on Training Restrictions in Public Law 106-58," available via Internet as of May 2011 at www.opm.gov/hrd/lead/policy/pl106-58.asp.

[3]Douglas A. Hicks, *Religion and the Workplace: Pluralism, Spirituality, Leadership*, Cambridge University Press, Cambridge, United Kingdom, 2003, pp. 174-182. The author uses the term "limiting norms" instead of "boundaries" and uses more formal labels (e.g., nondegradation and nonestablishment) to describe those norms.

Agency Corner: Exploring the Landscape of a National Park Service Recruitment Strategy

The trademark slogan for the National Park Service (NPS)—"Experience Your America"—is more than just a catchphrase. The tagline underscores an important recruitment goal for NPS, namely diversity. As leadership from NPS looked at an impending wave of Park Ranger retirements due to a mandatory retirement age, they saw a great opportunity to repopulate their ranks in a manner that better represents the nation they serve. To help reach this goal, NPS entered into a partnership with Temple University (Temple) to create the ProRanger Philadelphia Program. In addition to its academic reputation, Temple is also known for its diverse student body.

The ProRanger program recruits and trains individuals to be Park Rangers while they pursue traditional college degrees at Temple. Throughout the four academic years, program participants take courses designed to prepare them to be Park Rangers. During the summer months following their freshman and sophomore years, the NPS uses the Student Temporary Employment Program to provide students with paid internships at various parks throughout the United States. They get hands-on experience and exposure to a variety of Park Ranger duties, from performing basic park maintenance to conducting presentations about park facts. The summer following their junior year, students complete Temple's nationally accredited Law Enforcement program. This collective training experience, coupled with completion of a traditional college academic curriculum, prepares these individuals to be hired as Park Rangers fresh out of college. While this opportunity no doubt sounds compelling to college students interested in being Park Rangers, how does it allow NPS to better meet diversity goals?

First, although all applicants compete on equal terms, NPS has found that simply reaching out to underrepresented groups, such as women and minorities, has yielded a more diverse applicant pool. Outreach is targeted at numerous sources, including student and cultural groups at Temple, local high schools, and community colleges. The outreach consists of education about the program and available opportunities, as well as encouragement to apply.

These strategies help NPS to get more applications from targeted groups. A representative from NPS likened the approach to fishing—if you want to catch more fish, you need to cast a wider net. Naturally, a more diverse applicant pool results in an increased likelihood of being able to create a more diversified workforce with qualified individuals.

Second, due to the variety of Park Ranger duties, individuals can be enrolled in a variety of majors or courses of study and be eligible for the program. This encourages diversity in skill sets across applicants.

Overall, NPS has developed and is successfully using the ProRanger Philadelphia Program to attract, train, and hire talent in a manner that not only helps prepare trainees for the demands of the Park Ranger position, but also helps NPS better meet diversity goals. For more information, go to www.temple.edu/provost/careercenter/proranger/ProrangerPhiladelphia.html. ❖

Women in the Federal Government: Ambitions and Achievements

As stated in our most recent report, *Women in the Federal Government: Ambitions and Achievements*, agencies will need to continue looking beyond traditional workforce management strategies to attain and engage a high-performing, knowledge-based workforce that is representative of the public it serves.

In our report, MSPB notes that although women now outnumber men among both college and graduate students, they are still less likely than men to enter key occupational fields, such as science, engineering, law enforcement, and information technology. As MSPB Chairman Susan Tsui Grundmann noted, "Occupational differences matter, because they can create 'glass walls' in organizations—barriers to lateral movement and career growth for employees outside high-paying or mission-critical fields."

These glass walls may require agencies to reexamine their approaches to recruitment, work assignment, or leadership development, as the National Park Service has done with its ProRanger Philadelphia program. For more information on the status of women's employment in the Federal Government, you can download the study at www.mspb.gov/studies.

USERRA and the Cat's Paw: Don't Get Burned

The Supreme Court recently issued a Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) decision that agencies should bear in mind when considering actions against individuals whose records include military service.[1]

In *Staub v. Proctor Hospital*, 131 S. Ct. 1186 (2011), the Court was presented with a situation in which a private sector employer had fired an Army reservist, Staub, for alleged misconduct. It appeared that Staub's supervisors were hostile to his military obligations, frustrated by the scheduling complications created by his reservist duties, and wanted him fired. These supervisors asked the vice-president of Human Resources (Buck) to remove Staub for allegedly leaving his desk without notifying anyone, in violation of a management instruction. Staub denied this had occurred, but acting upon management's accusation and Staub's personnel file, Buck removed Staub.

Staub filed a grievance, but Buck adhered to her decision. Staub then sued the hospital under USERRA, claiming that his discharge was motivated by hostility to his obligations as a military reservist. Staub did not assert that Buck had any such hostility but claimed that his supervisors were motivated by this hostility and that their actions influenced Buck's employment decision.

Ultimately, the case reached the Supreme Court, which held that "if a supervisor performs an act motivated by antimilitary animus that is *intended* by the supervisor to cause an adverse employment action, and if that act [has a direct relation to] the ultimate employment action, then the employer is liable under USERRA." In other words, an employer can be held liable when a disciplinary decision was influenced by the animosity of a supervisor toward the employee's service, even if that supervisor was not directly responsible for taking the action.

This approach to employment law is known as a "cat's paw" case, based on a 17th-century fable in which a monkey persuades a cat to pull roasting chestnuts from a fire. The cat burns his paw, and the monkey makes off with the food. In the workplace context, Federal agencies could find themselves similarly burned if they permit officials with an improper motive (the monkey) to influence a final decision maker's personnel actions (the cat). ❖

[1]While the provisions for the enforcement of rights with respect to most Federal agencies is not the same as in private sector, USERRA, including the prohibition on discrimination because of military service, applies to Federal employers. *See* 5 U.S.C. §§ 4323-4325.

Favoritism

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promotion to one employee but denying it to a similarly situated employee who performed at the same level;

- A selecting official asking Human Resources to find a way to hire a friend of the selecting official who had been rated as not qualified for a position.

We recognize that managers must exercise some judgment when taking personnel actions including selections, work assignments, performance management, and providing for workplace flexibilities. In addition, selecting officials greatly influence selection decisions through a myriad of decisions regarding the recruitment and hiring process. That use of professional judgment is not necessarily favoritism.

Unfortunately, as reported in our 2009 report, *Fair and Equitable Treatment: Progress Made and Challenges Remaining*, many of today's Federal employees suspect that the merit-based ideal remains elusive because too many Federal managers make decisions based on their personal feelings or alliances and not on a more objective evaluation.

MSPB is delving more deeply into the issue of favoritism via a survey regarding the Federal merit systems. The survey will be distributed electronically to a wide range of Federal employees. If you receive an invitation to complete the survey, please take the time to share your perspective on this critical topic with us. Your response will help us strengthen Federal merit systems by highlighting issues that need clarification and by developing and summarizing recommendations for improvement. A well-managed Federal workforce is in the best interests of everyone—from Federal managers and employees to elected officials and the American public that we serve. ❖

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