

ISSUES OF MERIT

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Everyone Knows the ABCs: What About the MSPs and PPPs?

The merit system principles (MSPs) and prohibited personnel practices (PPPs) were designed to be succinct summaries of expectations for Federal merit systems. They are codified in title 5 of the U.S. Code (U.S.C.), sections 2301 and 2302 respectively. The 9 MSPs are the Federal Government's guidelines for how the workforce should be managed, and the 13 PPPs are specific behaviors in which officials and employees may not engage.

Understanding these guiding principles is critical to being able to implement them. Supervisors, managers, and executives may attempt to use their best judgment and consult internal agency experts, but agencies will be better served by ensuring that their employees are knowledgeable regarding how to embody the MSPs and steer clear of PPPs.

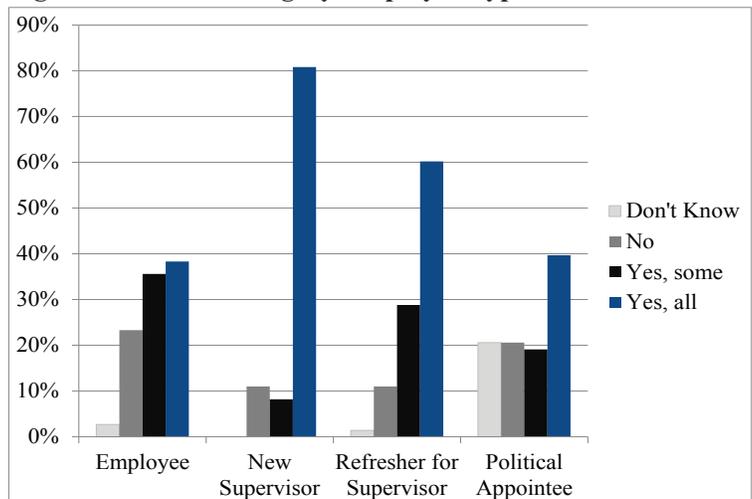
Given that agency Human Resources (HR) representatives often serve as advisors on and sometimes enforcers of the Federal merit systems,

we surveyed them to assess how well employees at various levels understand the MSPs and PPPs. Nearly 90 percent of the respondents had confidence that experienced managers possess "good" to "excellent" knowledge. However, fewer believed that new supervisors (72%) and political appointees (63%) are well-versed in the MSPs and PPPs. Additionally, only about half viewed nonsupervisory employees as having "good" or "excellent" knowledge of these principles.

This may be due in part to a lack of training that is offered to most employees. As shown in Figure 1, new supervisors and experienced supervisors who are

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Figure 1. MSP Training By Employee Type



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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.

Issues of Merit

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

Civil Service Reform: Things to Consider for the Next President

Thirty-eight years ago, the Civil Service Reform Act (CSRA) became law. The CSRA was the product of extensive study by experts, and it laid down new structures, processes, and substantive rules touching on most major aspects of personnel management throughout the executive branch. Today, many policymakers and managers express dissatisfaction with the Federal personnel system, to the extent that this will likely be on the management agenda for the next U.S. President. As policymakers and executive branch officials advocate for changes to the personnel rules, they should keep the following considerations in mind.

Is the change being contemplated constitutional? In 2014, Congress passed the Veterans Access, Choice & Accountability Act (VACA). Section 707 of VACA streamlined the procedures for removing senior executives at the Department of Veterans Affairs (VA) and conferred on administrative judges of the Merit Systems Protection Board (MSPB) the authority to make a final decision in the event that the executive appealed a removal. Hence, the three presidentially-appointed members of the Board would not be permitted to review an administrative judge's decision in such a case. Despite warnings by the members of MSPB that this provision violated the Appointments Clause of the Constitution, the President signed the bill into law. Earlier this year, though, the Attorney General announced that the Department of Justice agreed with the argument of a senior executive who was challenging her removal from VA that the prohibition against review by the

members of the Board is unconstitutional. As a result, VA announced it would no longer use the expedited removal authority granted by VACA.

Is there really a problem? In early 2016, the Administration proposed a bill to improve the discipline and appeals process for senior executives at VA. The bill provides, among other things, that a senior executive who is removed from VA shall no longer receive pay and benefits. However, as has been previously pointed out in MSPB research, there is no legal authority to continue to pay an individual who has been already removed from Federal employment, and there is no indication that such payments have been made.

Can a problem be solved by administrative action? Not long ago the Administrator of the Drug Enforcement Administration (DEA) asserted in testimony before Congress—which was investigating reports that DEA employees who were known to have committed very serious misconduct had been not fired—that her authority to discipline employees was extremely limited. She asked that the laws be amended to give her more authority. But then other parts of her testimony indicated that DEA was able to find other ways to address these limitations as a matter of internal DEA policy that DEA itself was free to change.

What is an appropriate vehicle for change? Recently, we have seen reform proposals that are narrowly focused or specific to one agency. This is not necessarily a bad thing—broad-based reforms to whole systems are not always preferable to targeted modifications—but it may not always be the best approach.

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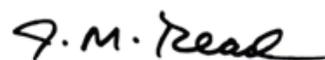
Director's Perspective

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S. 2943, the version of the 2017 National Defense Authorization Act reported out by the Senate Armed Services Committee on May 12, 2016, provides that veterans' preference in appointment to the Federal civil service may be exercised just once. Under current law, a veteran who is employed by the Federal Government may continue to claim preference under any open competitive job announcement. Not surprisingly, this provision has become quite controversial. This would be one of the most significant changes in Federal hiring in recent decades. However, it does not appear that it was ever the subject of a public hearing. Moreover, the provision, which is part of a 1,600-page appropriations

bill for the Department of Defense (DoD), would apply to hiring in all executive agencies, not just DoD. Perhaps such an important Governmentwide change ought to be considered publicly by a committee whose formal mandate includes the civil service.

Since the passage of the CSRA almost 40 years ago, numerous changes have been made to the Federal personnel system. We can learn much from how these changes occurred. The lessons could prove invaluable to the next Administration as it embarks on a new management agenda for the coming years. ❖



Director, Policy and Evaluation

Focus on the Facts

Myth: Veterans' preference is only an advantage among equally qualified candidates.

Fact: Veterans' preference allows for some "qualified"—but not "best-qualified"—veterans to be hired over best-qualified nonveterans.

Focus: Veterans who are disabled or who served on active duty during certain specified time periods or military campaigns are entitled to preference in a hiring competition among all U.S. citizens. Agencies are to use category rating procedures when determining which candidates will be referred to the selecting official, including veterans. Under category rating, agencies assess candidates against job-related criteria and place qualified candidates in two or more quality categories. Veterans with a 10 percent or more compensable disability who meet the standards for "qualified"—but not necessarily the standards for "best-qualified"—are placed in the best-qualified category. They must therefore be selected over all nonveterans in that category, even those who were assessed to be more qualified.

Consequently, veterans' preference can provide an advantage to candidates who are not as qualified as others. The criteria used to place the veteran in the top category can have little or nothing to do with the quality of his or her qualifications, despite the name of the category. Once a veteran with a 10 percent or more compensable disability is deemed qualified, the agency must place the veteran in the highest quality category. For these individuals, then, "best-qualified" is assigned by operation of law, not as a result of any further assessment beyond "qualified" of the veterans' knowledge, skills, abilities, competencies, or other job-related criteria.

For more on veterans' preference and how it operates, see our report, *Veteran Hiring in the Civil Service: Practices and Perceptions*.

Sources: Presidential Memorandum—Improving the Federal Recruitment and Hiring Process, May 11, 2010; 5 U.S.C. § 3309; and 5 U.S.C. § 3319(c)(2)

Avoiding Nepotism Is as Easy as 1, 2, 3

MSPB's recent study describes steps employees can use to avoid nepotism.

In the Federal civil service, there are several different sets of rules that prohibit nepotism. The precise definition of nepotism depends on the rule involved. Regardless, employees can use the same three steps to reduce their risk of committing any of the prohibited activities, as discussed in MSPB's new report *Preventing Nepotism in the Federal Civil Service*.

The type of relationship between the employee and the person benefiting, as well as the types of personnel actions that qualify as nepotism, can overlap between the three sets of rules that prohibit nepotism. However, it is possible for an employee's actions to constitute a violation of only one or two of these rules and not all three. Additionally, if the employee's activity harms the efficiency of the service, an agency can take an adverse action such as removal, suspension, demotion, or debarment even if the conduct does not fall squarely under any of these three sets of rules.

Whether an official faces a possible issue under the criminal statute (18 U.S.C. § 208), the administrative statute (5 U.S.C. § 2302(b)(7)), the agency's disciplinary authority to prevent damage to the efficiency of the service (5 U.S.C. § 7503(a), 7513(a)), or the ethics rules (5 CFR § 2635.502), the means to avoid the impropriety tend to be very similar.

1. **Consultation:** If a situation could potentially qualify as nepotism or pose a conflict of interest, and the employee wishes to proceed, the employee should consult the agency's ethics advisor. Agencies appoint individuals whose duties specifically include providing ethics guidance to employees to help them avoid conflicts of interest. An employee should exercise good judgment by not trying to independently judge his or her own case.
2. **Disclosure:** The employee should disclose the issue to a supervisor or other suitable agency official so that the agency can make an informed decision about the proper approach. An employee's silence or secrecy can damage the ability of the agency to trust the employee in the future, and this damage can be reflected in the severity of the resulting penalty.
3. **Recusal:** An employee should attempt to recuse himself or herself from involvement in the personnel action. The best way not to become entangled in questionable conduct is for the employee to avoid

The Rules That Prohibit Nepotism

Criminal statute, 18 U.S.C. § 208: Prohibits certain types of nepotism involving an employee's spouse, minor child, or other relationships that would cause the employee to have a financial interest in the outcome. This type of nepotism can result in a prison sentence.

Administrative statute, Prohibited Personnel Practice, 5 U.S.C. § 2302(b)(7): Prohibits an official from acting to appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement any individual who is a relative. The code contains a detailed definition of who is considered a relative, and the commission of this PPP can result in debarment (ineligibility for Federal employment), removal, demotion, suspension, and/or a fine.

Ethics rules, 5 CFR § 2635.502: These rules state that an employee cannot give preferential treatment to anyone, will report corruption to appropriate authorities, and must avoid actions that create the appearance of violating the ethical standards. For more information on ethics rules in the Federal Government, see the U.S. Office of Government Ethics website at www.oge.gov.

involvement in such situations entirely when possible and act only if instructed to do so by a well-informed superior after a full disclosure has been made.

While nepotism itself is clearly defined under some rules (e.g., the nepotism PPP), and more nuanced under others (e.g., the ethical standards), the solution is consistent: (1) consult; (2) disclose; and (3) recuse. If employees follow these three steps, then avoiding nepotism can be as easy as 1, 2, 3.

For a more in-depth discussion of these issues and the case law behind them, see MSPB's full report, *Preventing Nepotism in the Federal Civil Service*. ❖

Social Media: Should Managers Use It to “Like” or “Dislike” Applicants?

What are the drawbacks to using social media to evaluate applicants’ qualifications?

The Partnership for Public Service published *#Now Hiring: The Role of Social Media in Agency Recruiting*, which provides pointers on using social media to recruit, such as :

- Be visible—use a constant presence to tell your agency’s story;
- Be selective—use only the sites that make sense for your agency;
- Announce—post all jobs on USAJOBS to fulfill the public notice requirement;
- Support—give staff guidance on how to represent the agency on social media; and
- Connect—use social media to network and market hard-to-fill positions.

These are great tips for using social media in the hiring process, but recruitment is only the initial step. What about assessment? Is there a role for social media in helping identify the best qualified? Agencies and managers should consider very carefully the following three issues before checking out an applicant’s online presence during the assessment phase of the hiring process.

Reliability. The fact that something is on the Internet does not mean that it is true. Impression management is not limited to resumes and first dates. A candidate may claim deep knowledge, far-reaching networks, and towering achievements on a LinkedIn profile—but are those claims valid? Both the public and applicants are ill-served if a hiring manager gives credence to online style that is not supported by offline substance. Conversely, it is possible for hackers or “haters” to smear or misrepresent an applicant online who is competent and trustworthy.

Job-relatedness. Online profiles, even on professionally-oriented sites, can contain information of little or no relevance to the job. Details about a candidate’s personal life and associations, such as celebration of a milestone or support of a particular cause or political party, add nothing positive to a hiring decision. And there are risks even when a hiring manager knows

that giving any weight to those details may constitute discrimination or a prohibited personnel practice. First, information about a candidate’s age, religion, sexual orientation, or socioeconomic background may subtly bias the evaluation of job-related qualifications, without the hiring manager even realizing the effect. Second, obtaining and possessing such information—even if it was appropriately discounted—may raise uncomfortable questions about a manager’s motives or objectivity.

Fairness and access. Applicants should be assessed on consistent criteria, in a consistent manner. To that end, agencies should afford every candidate a reasonable opportunity to complete any assessment that the agency will consider. That is one reason that the Office of Personnel Management expressly requires agencies to inform applicants how they will be assessed. Even today, there are applicants who spend little or no time in the virtual world, for personal or financial reasons. Using social media as an assessment may unintentionally tilt the playing field, contrary to an agency’s

obligation to conduct fair and open competition so that all applicants receive equal opportunity.

This does not mean that an applicant’s use of social media can never be scrutinized or considered. There are instances in which information on social media activity might be relevant. For example, postings that suggest use of controlled substances may be cause for concern. However, these are questions of suitability rather than proficiency and should be handled accordingly. For good reason, Federal agencies generally do not delegate the investigation and adjudication of suitability to hiring managers.

Social media and its uses are evolving quickly. The day may yet come when it can routinely and robustly aid in evaluating applicants’ qualifications. For now, though, hiring managers would be wise to treat social media as a recruitment tool, rather than an assessment tool, and to be wary of using social media to conduct freelance research on applicants. ❖



When Can Training Help Remedy Wrongdoing?

You can teach employees about the rules; training them to follow them may not be as successful.

After an Inspector General’s investigation uncovered that the National Parks Service Director intentionally skirted the Department’s ethics office to publish a book, one of his punishments was to attend monthly ethics training. In early June, the Office of Special Counsel (OSC) announced that it had obtained agreement from the Fish and Wildlife Service to have OSC conduct training for all employees at a national wildlife refuge on the PPPs, including whistleblowing, after MSPB found that three supervisors had engaged in whistleblower retaliation.

These cases raise the question of what role training should play in response to wrongdoing. For instance, will training actually help change behaviors related to honesty and integrity? MSPB’s research shows that it depends on why the wrongdoing took place.

Did the wrongdoing occur because the employees did not understand the conduct expected of them? If yes, then training could very well be an appropriate response. It is important to ensure that employees understand the conduct that is expected of them, which may mean explaining the rules. Thus, training about the rules for ethical conduct can be appropriate. As explained in MSPB’s 2011 report, *Making the Right Connections: Targeting the Best Competencies for Training*, knowledge—including knowledge of laws, policies, and regulations—is one of the most trainable competencies. Therefore, if an employee does not know that they have

to go through a specific process before publishing a book, training could be an appropriate response.

Did the wrongdoing occur because the employees knowingly violated a rule to obtain a perceived benefit? Then our research indicates that training will not likely be an effective solution. Some expectations, such as “do not fire an employee for reporting unethical conduct by a second-level supervisor,” should be self-evident. When multiple officials demonstrate an unethical reaction to the disclosure of unethical conduct, the issue is likely not a lack of knowledge, but rather a lack of integrity. MSPB’s research demonstrates that it is very difficult to train for mental style competencies, such as integrity or conscientiousness.

When determining an appropriate penalty for misconduct, one factor agencies should consider is whether employees were clear about the rules in the first place. Providing clear guidance of the rules can help ensure that employees are on fair notice of what is expected and enable the agency to hold employees accountable.

Training about rules can offer employees instructions on how to navigate the system to reach their ethical goals in a manner that complies with policies. But this requires that the agency’s employees have ethical goals. The teaching of rules can enhance the effectiveness of pre-existing integrity; but, integrity itself is a far less trainable competency for which there is no substitute. ❖

Trainability of Selected Competency Types

Type of Competency	Trainability
Knowledge—job knowledge, academic subjects, knowledge of laws, policies, and regulations.	Highly Trainable
Language, social, and reasoning—oral communication, written communication, interpersonal skills, teamwork, conflict skills, diversity skills, customer skills, influencing and negotiating, partnering, and political savvy, analyzing and solving problems, financial calculation, computer skills, planning work and making standards.	Moderately Trainable
Motivation and mental style—resilience, work motivation, integrity, vision, flexibility, creativity, learning ability, decisiveness and entrepreneurship.	Less Trainable

MSP and PPP Education

(continued from page 1)

career employees are more likely than political appointees or nonsupervisory employees to receive an overview of the MSPs. Results regarding training provided on the PPPs are very similar.

Although political appointees are few in number, they typically have great authority over decisions that impact the agency and its workforce. Agencies need to ensure, therefore, that these appointees are familiar with the requirements of the Federal merit systems and understand that the Federal sector has unique expectations for the management of the workforce. Additionally, because employees need to understand their rights and responsibilities, as well as have appropriate expectations for the operation of Federal merit systems, agencies should consider providing more training to all employees regarding the MSPs.

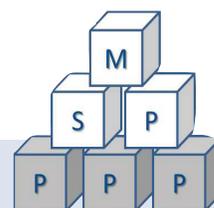
Given the criticality for supervisors to perform their role effectively, this training should be provided to new supervisors as promptly as possible—ideally before the selectee moves into the new role. However, only 3 percent of agency respondents indicated that their agencies provide training to new supervisors before or during their first week, while 40 percent provided training within 3 months. Another 18 percent stated they did not provide new supervisors any training on the MSPs and PPPs.

In addition, the length of the MSP and PPP training offered by the majority of agencies is very brief. Fifty-four percent of agencies indicated that they offer 1–3 hours of training and 23 percent offer less than 1 hour. Considering the importance of the MSPs and PPPs to effective supervisory performance, agencies should consider providing more in-depth training, particularly for supervisors regarding how the MSPs apply to their responsibilities.

To achieve this economically, agencies may need to explore alternatives to their current training strategies. Agencies reported that they most frequently provided traditional classroom training (52%) or one-on-one training (21%). Although these training methods offer some advantages, agencies may need to supplement them with other forms of technology-based training to enable new supervisors to learn material when they can work it into their schedules. For example, some agency representatives mentioned offering self-paced computer modules (38%) and webinars (22%).

The MSPs encompass broad directions (e.g., manage employees efficiently and effectively), guidance regarding discrete aspects of workforce management (i.e., recruitment, selection, pay, training, retention), as well as proscriptions against arbitrary action, personal favoritism, political influence, and reprisal for exercising legal rights. Consequently, employee education needs to occur at various levels of specificity. In global terms, employees may be informed about the general concepts of the MSPs and PPPs. However, connecting these to specific behaviors is essential to helping supervisors and managers exercise their duties in accord with the MSPs.

MSPB provides more details regarding the meaning and intent of each of the MSPs and PPPs, as well as findings and recommendations from studies relating to these topics, in an upcoming report, *The Merit System Principles: Guiding the Fair and Effective Management of the Federal Workforce*. ❖



Educational Resources Available Through MSPB's Website

Merit System Principles:

www.mspb.gov/meritsystemsprinciples.htm

- MSPs: 5 U.S.C. § 2301
- MSPB's MSP of the Month

Prohibited Personnel Practices:

www.mspb.gov/ppp/ppp.htm

- PPPs: 5 U.S.C. § 2302
- MSPB's PPP of the Month

www.mspb.gov/training.htm

- MSPB's PPP Mini Briefing
- MSPB's Blowing the Whistle Mini Briefing

MSPB Studies:

Prohibited Personnel Practices: Employee Perceptions and other related studies are found at www.mspb.gov/studies/browsestudies.htm



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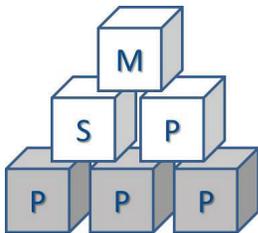
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