

ISSUES OF MERIT

Winter 2015

a publication of
the U.S. Merit Systems
Protection Board,
Office of Policy
and Evaluation

WHAT'S INSIDE

Director's Perspective
Page 2

MSPB Research Agenda
Development Process
Page 3

HR and Preventing
Prohibited
Personnel Practices
Page 4

Collaboration in the
Hiring Process
Page 5

Need for
Social Competencies
Page 6

Emotional Labor: Often Overlooked, Always Present

Many Federal jobs routinely require employees to manage their emotions—and the expression of those emotions—to perform effectively. This emotional management may be called “emotional labor” (EL) and employees in many public sector jobs must cope with its demands.

What is EL? EL is the effort that an employee must apply to suppress private feelings in order to show appropriate work-related emotions. It is the process of managing one’s own emotions, sensing the emotions of others, and using that knowledge to govern actions on the job.¹ EL can take a toll on employees; one large study found that the more employees have to conceal their emotions as part of the job, the more discomfort they experience, the lower their sense of well-being, and the poorer their job performance.²

Which Federal positions require EL skills? Many public sector jobs have particularly high EL demands.³

1. Mastracci, S., Guy, M.E & Newman, M.A. (2010). *Emotional labor: Why to teach it, how to teach it*. *Journal of Public Affairs Education*, 16, 2, pp. 123-141.

2. Hülshager, U. R. & Schewe, A. F. (2011). *On the costs and benefits of emotional labor: A meta-analysis of three decades of research*. *Journal of Occupational Health Psychology*, 16, pp. 361–389.

3. Guy, M.E., Newman, M.A., & Mastracci, S.H. (2008). *Emotional labor: Putting the service in public service*. Armonk, NY: M.E. Sharpe.

Employee-citizen interactions are at the core of public service work and much EL is performed on a regular basis. For example,⁴ diplomats in the State Department must “finesse” relationships with their international counterparts on politically charged policies. Federal Emergency Management Agency employees must service the needs of citizens under traumatic circumstances when their lives have changed dramatically. Corrections and law enforcement officers routinely attempt to gain voluntary compliance from difficult members of society. Social workers investigate and report abuse and are sometimes called to take action in emotionally charged environments. All of these jobs require considerable EL.

What strategies can employees use to cope with EL? There are several ways that employees cope with emotional stressors in the workplace. Some of these strategies include developing:⁵

- *Rapport*: establishing a deep understanding with others so as to

4. Mastracci, S., Guy, M.E & Newman, M.A. (2010). *Emotional labor: Why to teach it, how to teach it*. *Journal of Public Affairs Education*, 16, 2, pp. 123-141.

5. Guy, M.E., Newman, M.A., & Mastracci, S.H. (2008). *Emotional labor: Putting the service in public service*. Armonk, NY: M.E. Sharpe.

continued, page 7

ISSUES OF MERIT

U.S. Merit Systems
Protection Board

CHAIRMAN

Susan Tsui Grundmann

VICE CHAIRMAN

Anne M. Wagner

BOARD MEMBER

Mark A. Robbins

Office of Policy and Evaluation

DIRECTOR

James Read

**DEPUTY
DIRECTOR**

James J. Tsugawa

Our Mission

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.

Reprint Permission

We invite you to reprint any of our articles. If you do, please include the following attribution: *Reprinted from Issues of Merit, a publication of the Office of Policy and Evaluation, U.S. Merit Systems Protection Board.*

For More Information

Contact us at:
www.mspb.gov/studies
STUDIES@mspb.gov
202-254-4802 x4802
1-800-209-8960
V/TDD: 202-653-8896
(TTY users may use the Federal Relay Service, 800-877-8339)

U.S. Merit Systems Protection Board
Office of Policy and Evaluation
1615 M Street, NW
Washington, DC 20419

DIRECTOR'S PERSPECTIVE

Before We Change Things, Let's Know the Status Quo

Press accounts describing recent and potential changes to the laws that govern Federal employment reveal that some influential actors may hold misconceptions about how existing laws operate. Below, I discuss several key legal principles in this area.

Tenure and due process. The Fifth Amendment to the Constitution provides that an individual shall not “be deprived of . . . property without due process of law.” This provision does not confer any property interest. Instead, the right to due process—which generally consists of advance notice of the action and an opportunity to respond—is triggered when the Government contemplates taking away a property interest that was created by some source *outside* the Constitution.¹ If statute specifies that a Government employee can be removed “only for specific reasons,” the employee “has a property interest in continued employment” that cannot be terminated without due process.² By enacting laws such as the Lloyd-LaFollette Act of 1912 and the Civil Service Reform Act of 1978, Congress has chosen to make most Federal employees removable only for specific reasons, thereby granting those employees a property interest, or tenure.³ One aim of these laws was to reduce the possibility that a civil servant could be subjected to political pressure to perform his duties in other than a fair and objective manner. Exceptions to these tenure-granting laws exist

for probationary employees, temporary employees, and political appointees.⁴ Notably, although Congress recently modified the process for removing a member of the Senior Executive Service employed by the Department of Veterans Affairs (VA), the amended law nonetheless provides that a VA senior executive may only be removed for specific reasons.⁵

Watch for an upcoming report that addresses the topics of tenure and due process in depth.

Salary and the appeal process.

There is no legal authority for the Government to continue to pay the salary of an employee once he or she has been removed for cause and is pursuing an appeal before the Merit Systems Protection Board (MSPB). Instead, an employee has a right to be reinstated with resumption of pay on an interim basis if, on appeal, he or she receives an initial decision from an Administrative Judge that overturns the removal.⁶ Likewise, the employee has a right to permanent reinstatement and back pay if he or she receives a final MSPB decision setting aside his or her removal.⁷ It makes no difference how long the appeal process takes if the firing is upheld, since payment of an employee's salary ends before the appeal process begins.

Firings and pensions. A Federal employee who meets the age and length of service requirements for a pension—called an “annuity” under applicable law—and who receives advance notice that he or

4. 5 U.S.C. § 7511(a)(1)(A), (b)(1) - (2).

5. 38 U.S.C. § 713(a)(1).

6. 5 U.S.C. § 7701(b)(2).

7. 5 U.S.C. §§ 5596(b), 7701(c).

1. *Stone v. Federal Deposit Insurance Corporation*, 179 F.3d 1368, 1374 (Fed. Cir. 1999).

2. *Id.*

3. 5 U.S.C. §§ 4303, 7513.

continued, page 3

Director's Perspective

(continued from page 2)

she will be removed for cause retains his or her right to a pension, without regard to whether he or she resigns immediately or waits until the removal is carried out. It is only when a Federal employee is convicted of a particular kind of crime, such as espionage, treason, or advocating the overthrow of the Government, that he or she forfeits his or her pension.⁸ Thus, a retirement-eligible Federal employee who resigns after being informed that he or she will be fired is not vitiating any existing law. The firing, if carried out, would not have affected his or her pension. Moreover, the official record will show that the employee resigned after being told he or she would be fired.⁹

The situation in the private sector is no different. An employee who meets the applicable vesting requirements under a private pension plan does not lose his or her pension when his or her employer fires the employee for cause.¹⁰ ❖

James Read

Director, Policy and Evaluation

8. 5 U.S.C. § 8312.

9. *Guide to Processing Personnel Actions* at 31-11, 31-14 n.3 (Office of Personnel Management).

10. *United States v. Hermann*, 910 F. Supp. 2d 844 (E.D. Va. 2012).

New! Check out MSPB Flash Page on Web-Based Instruction

Federal agencies have an ongoing need to prepare employees for changing job demands and to improve overall performance. Training can offer a vehicle for accomplishing these goals. Web-based instruction (WBI), an increasingly popular training method, may be the right answer for some training needs.

See the MSPB Flash Page (www.mspb.gov/studies) for the latest article that answers several questions managers may have about WBI.



**Thanks to everyone who provided input to the 2015 – 2018 Research Agenda!
For more details, please visit: <http://www.mspb.gov/sunshineactmeeting/>.**



HR Needs More Support in Preventing Prohibited Personnel Practices

The prohibited personnel practices (PPPs) are a list of prohibited activities, codified at 5 U.S.C. § 2302(b).¹ Their primary purpose is to ensure that personnel actions are not taken for improper reasons.² As advisors to managers and those who process personnel actions, human resources (HR) staff are responsible for educating their customers on the PPPs and alerting them when their conduct approaches or crosses the line between an action permitted within managerial discretion and a PPP.

It is a PPP to deliberately seek to improve the chances of any specific individual to be selected for employment unless that advantage is expressly authorized by a law, rule, or regulation. Such conduct also would be contrary to the merit system principle of fair and open competition.

When a manager requests assistance with an HR action that appears to constitute a PPP, the HR specialist is prohibited from intentionally assisting that customer to achieve the improper goal.³ Instead, the specialist is expected to exercise his or her “independent judgment and challenge... local management’s fairly obvious efforts to grant a preference” not authorized by law.⁴

In our report on fair and open competition, we found that only 74 percent of HR staff agreed that their supervisor would support them in their refusal to commit a PPP. HR employees should be able to expect that their supervisors will support them in meeting this obligation. We also found indications that some organizations may

have defined “HR customer” and “HR customer service” in ways that are troubling. For example, one in five HR survey respondents believed that their supervisor would consider it bad customer service to report that one of their customers had committed a PPP. One possible reason for such beliefs is that some HR supervisors and managers have encouraged or directed HR staff to improve service to managers at the possible expense of upholding the merit system principles (MSPs).

HR is indeed a customer service function and it is important for HR to understand, and strive to meet, managers’ legitimate needs. However, the true “customer” is the public who established, through the MSPs and PPPs, clear standards for how employees should and should not be hired. HR supervisors and managers have a responsibility greater, and more demanding, than merely pleasing managers and acceding to their requests. Under 5 U.S.C. § 2302 (c), the head of each agency is “responsible for the prevention of the prohibited personnel practices [and] for the compliance with and the enforcement of applicable civil service laws, rules, and regulations[.]” That means that the true “customer service” involves preventing, rather than committing or permitting, PPPs. We strongly encourage HR managers to send that message to the leaders they serve and support, as well as the staff they lead.

For more information, please see our report, *The Impact of Recruitment Strategy on Fair and Open Competition for Federal Jobs*. ❖

“HR employees should be able to expect that their supervisors will support them in refusing to commit a Prohibited Personnel Practice.”

1. An employee may be suspended, reduced in grade, removed, debarred from Federal service, and/or fined for the commission of a PPP. Employing agencies cannot grant permission to commit a PPP and cannot protect employees from the penalties for committing a PPP. For more on the prohibited personnel practices and how they are enforced, please see, U.S. Merit Systems Protection Board, *Prohibited Personnel Practices: Employee Perceptions*, August 2011.

2. *Humberson v. U.S. Attorney’s Office for District of Columbia*, 236 F.Supp.2d 28, 32 (D. D.C. 2003), aff’d, 2003 U.S. App. Lexis 14481 (D.C. Cir. 2003) (holding that the purpose of the PPPs is to “forbid employers from imposing” personnel actions “out of particular illicit motivations”).

3. *Special Counsel v. Lee*, 114 M.S.P.R. 57, ¶¶ 34 (2010).

4. *Id.*



Managers: Work with HR to Make Decisions in the Hiring Process

When you look at an overview of the typical Federal hiring process,¹ it is easy to understand why some view the process to be overly complex and lengthy. However, each of the steps is in place to achieve three goals: (1) to support the merit system principles, such as selecting on the basis of merit after fair and open competition; (2) to avoid the commission of prohibited personnel practices; and (3) to give selecting officials flexibilities and options. In order to help ensure these goals are met—and that managers are satisfied with the hiring process (and outcomes)—hiring managers and HR should collaborate throughout each step of the hiring process.

The competitive examining process provides numerous opportunities for customization to fill a vacancy. These decisions must be made before issuing the vacancy announcement to avoid perceptions of “gaming the system” to provide an advantage to certain candidates. While HR has the responsibility for educating managers regarding their options and the implications of each choice, managers must understand that hiring a well-qualified employee requires an investment of their time and energy. Although working through the entire process may strike some hiring managers as “doing HR’s work for them,” managers should realize that this collaboration enables them to exercise their discretion throughout the hiring process, rather than have important decisions made for them.

Step 1: The selecting official should identify the knowledge, skills, abilities, and competencies that are needed to perform the work. These job requirements can be determined by reviewing current job analyses, classification standards, and past vacancy announcements, as well as by consulting with current job incumbents. Any new responsibilities of the position should also be considered. This information should be discussed with HR, who can assist in determining minimum qualifications and any selective placement factors as well as the number and criteria for the rating levels when category rating is used.

Step 2: The hiring manager should work with HR to develop an assessment strategy for the position.² This

strategy should include determining which competencies will be evaluated as well as methods for best assessing candidates on these criteria. One factor to consider in determining which competencies to evaluate is whether proficiency in such competencies is required to start the job or can be developed while on the job.³ The rigor, costs, time, and sequencing of the potential assessment methods also should be considered. A multiple hurdle assessment process is frequently used. Here, low-resource assessments (*e.g.*, self-report questionnaires on an applicant’s training and experience⁴) typically come first and eliminate less-qualified applicants. Then, more labor-intensive procedures, such as the structured interview,⁵ are applied only to the top candidates.

Step 3: HR should advise the manager regarding the range of recruitment and hiring flexibilities that may be used. These may be widely accessible (*e.g.*, veterans hiring authorities) or used only when meeting certain criteria (*e.g.*, direct hire and recruitment incentives). HR and managers also should discuss administrative issues, such as how long to leave the vacancy announcement open. Many of these decisions will rely on past experience and success in attracting a highly qualified pool of applicants.

Designing the actual vacancy announcement with HR then can serve as a reality check to ensure that all of the essential decision points have been discussed since the vacancy announcement should include information such as a description of the duties, required qualifications, and the assessment process. Although this article focuses on a few of the most critical steps in the hiring process, there are many more decision points. Thus, we encourage managers to take advantage of the expertise of their HR and program support staff, to guide them through this journey to select the best prospective employees within the Federal merit systems. ❖

out for a Federal Job, pp. 25-38, September 2009.

3. U.S. Merit Systems Protection Board, *Making the Right Connections: Targeting the Best Competencies for Training*, February 2011.

4. U.S. Merit Systems Protection Board, *Evaluating Job Applicants: The Role of Training and Experience in Hiring*, January 2014.

5. U.S. Merit Systems Protection Board, *The Federal Selection Interview: Unrealized Potential*, February 2003.

1. U.S. Office of Personnel Management, *Delegated Examining Unit Handbook*, May 2007, p. 9, available at: http://www.opm.gov/policy-data-oversight/hiring-authorities/competitive-hiring/deo_handbook.pdf.

2. U.S. Merit Systems Protection Board, *Job Simulations: Trying*

Need for Social Competencies Increases with Leadership Responsibility

Most Federal jobs require employees to work well with others. Whether these people are fellow team members, colleagues from other agencies, or members of the public, interacting with them requires well-developed social competencies. These competencies are particularly important for supervisors and leaders because their actions and attitudes set the tone for all who report to them. Further, leaders' social competence likely has implications for an agency's reputation.

MSPB research has documented the importance of social competencies in higher positions of leadership responsibility. One MSPB Governmentwide survey¹ asked employees to describe the competency for which they most needed improvement. In Figure 1, these responses are classified using the Office of Personnel Management's (OPM) five Executive Core Qualifications (ECQs).² Within each ECQ, the responses are summarized separately for employees with five different

levels of leadership responsibility. These levels are (from left to right): Nonsupervisory, Team Leader, Supervisor, Manager, and Senior Executive.

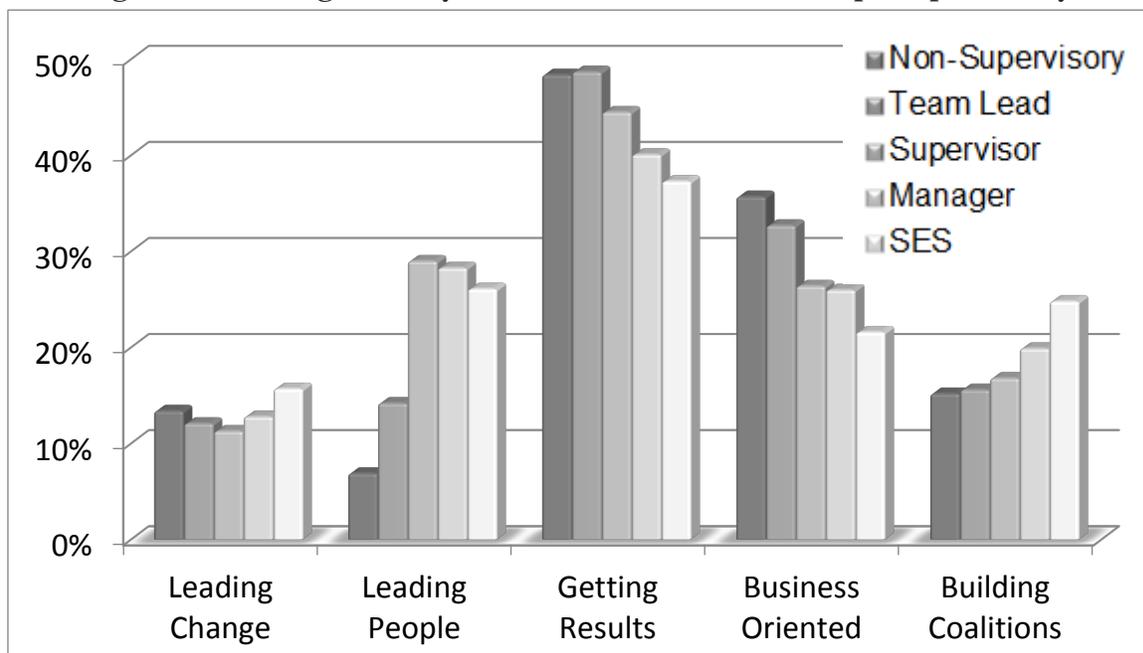
Figure 1 illustrates that the two most social competency-based ECQs show an increase in training need with greater leadership responsibility. The greatest increase is in the Leading People ECQ³ across the transition from Nonsupervisory to Supervisor roles. The training need for Building Coalitions competencies⁴ also is perceived to be more important at higher levels of leadership. This makes sense, as senior leaders face added challenges of working with leaders in other organizations as well as with their own employees. Although there is a corresponding decrease in the perceived need for strengthening Getting Results and Business Oriented ECQs, they remain a high priority for most Federal leaders. The decrease in importance of these ECQs may reflect the effectiveness of selection processes that grant

1. U.S. Merit Systems Protection Board, *Making the Right Connections: Targeting the Best Competencies for Training*, February 2011.
 2. Information about OPM's Executive Core Qualifications is available at: <http://www.opm.gov/policy-data-oversight/senior-executive-service/executive-core-qualifications/>.

3. The Leading People ECQ includes the competencies: Conflict Management, Leveraging Diversity, Developing Others, Team Building, and Integrity/Honesty.
 4. The Building Coalitions ECQ includes the competencies: Written Communication, Oral Communication, Interpersonal Skills, Partnering, Political Savvy, and Influencing/Negotiating.

continued, page 7

Figure 1. Training Need by ECQ and Level of Leadership Responsibility



These responses are classified using OPM's five ECQs.

Social Competencies...

(continued from page 6)

access to leadership positions; applicants who are weak in these ECQs may have been screened out in favor of those who have already developed them.

A more recent study of competency models in 18 Federal agencies⁵ confirmed the increasing importance of social competencies at higher levels of leadership. This study identified competencies most responsible for successful transition to upper-level leadership roles. The key competencies for leader career success overlapped with the social competencies identified by MSPB training needs research; they included Influencing/Negotiating, Partnering, Inspiring Others, and Interpersonal Skills.

The MSPB research cited above identified social competencies as having both trainable and less trainable aspects. Recognizing the difficulty of developing less trainable competencies, MSPB has advocated focusing

selection programs on these competencies to ensure that they are present in the Federal workforce. Part of the solution is to strengthen selection processes in this area, particularly for the less trainable competencies.

However, improved selection is not the entire solution. It cannot benefit leaders who are already in place—and have recognized their need for improvement. MSPB research is addressing training for current supervisors and other agency leaders. In a 2010 study,⁶ we reported the training first-line supervisors wanted most as they began their supervisory duties. An upcoming MSPB report focuses on training and development for the Senior Executive Service. Both reports address the development of key abilities needed to lead the Federal workforce effectively. ❖

5. Sanderson, K., Klein, R., Semmel, S. and Mueller-Hansen, R. (2013). *Career Accelerators: Competencies Essential to Leader Transitions in the Government*. IPAC.

6. U.S. Merit Systems Protection Board. *A Call to Action: Improving First-Level Supervision of Federal Employees*, May 2010.

Emotional Labor...

(continued from page 1)

communicate effectively;

- *Emotional armor*: learning to be less sensitive to personal attacks and how to keep your cool; and
- *Emotional façade*: learning to express an emotion one does not actually feel.

How can EL be given appropriate attention in the workplace? Once employers recognize that some jobs require more EL than others they can use this information to strengthen their workforce. For example, realistic job previews can be used to describe the extent of EL required for successful performance on a job. Position announcements can highlight emotional demands (*e.g.*, the position announcement for a Medical Support Assistant at the Department of Veterans Affairs may acknowledge that the job requires the ability to appropriately respond to emotionally distressed patients). Other suggestions for addressing EL in the workplace include:⁶

- *Use buffering*: Assign emotionally intelligent and seasoned employees to be the first point of contact

to manage the emotional demands and needs of customers.

- *Teach “display” rules*: Establish and communicate organizationally approved norms or standards for emotional expression that employees can learn through observation, instruction, feedback, and reinforcement.
- *Offer staff assistance programs*: Provide access to stress management and emotional health services to help employees manage the burden of EL.
- *Teach problem-solving techniques*: Build employees’ confidence in handling emotionally-charged and unpredictable situations.
- *Improve emotional intelligence*: Train employees on how to effectively recognize and respond to other people’s emotions.

Focusing on EL is a way to examine jobs for their stress- and strain-inducing potentials. It also affords new opportunities to improve employees’ ability to meet these challenges. Like physical and mental labor, EL is a form of effort that should be part of understanding jobs and the employees who do them. ❖

6. Mind Tools (http://www.mindtools.com/pages/article/newTMM_44.htm).



U.S. Merit Systems Protection Board
1615 M Street, NW
Washington, DC 20419

FIRST CLASS MAIL
POSTAGE & FEES PAID
MSPB 20419
PERMIT NO. G-113

ISSUES OF MERIT

Winter 2015

Volume 20 Issue 1

IN THIS ISSUE * IN THIS ISSUE * IN THIS ISSUE

Emotional Labor. *There is an emotion component to many public service jobs that deserves attention. (Page 1)*



Director's Perspective. *It is important to understand the law before you try to change it. (Page 2)*

Research Agenda. *An overview of MSPB's research agenda development process. (Page 3)*



Prohibited Personnel Practices. *HR managers should support their staff in preventing PPPs. (Page 4)*

A Collaborative Hiring Process. *Managers should work with HR to make the best hiring process decisions. (Page 5)*



Social Competencies. *The need to develop social skills increases with leadership responsibility. (Page 6)*