

ISSUES OF MERIT

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Moving Toward a Shared Understanding of Sexual Harassment

The #MeToo and Time's Up movements have facilitated more open discussions about sexual harassment in the workplace. As a result, many people, including Federal employees, are asking how frequently sexual harassment occurs in work settings like theirs, and perhaps some may wonder whether their past behavior crossed the line.

As part of its mission to conduct Governmentwide studies and report on the health of Federal merit systems, the Merit Systems Protection Board (MSPB) has collected data on sexual harassment in the Federal workplace. We conducted surveys in the 1980's and 1990's and most recently in 2016. These surveys solicited Federal employees' views on various issues, including what behaviors constitute sexual harassment and whether they had experienced any of these behaviors in the prior 2 years. Both questions are important to ask because Federal employees need to have a shared understanding of sexual harassment to cease behaviors that can be problematic.

MSPB's survey items encompassed a range of sexual harassment behaviors, based on a review of the relevant literature and case studies. To aid comparisons over time, eight of these items were repeated from previous surveys. Four new items were added to reflect the contemporary understanding of sexual harassment.¹ The resulting 12 behaviors, listed on the next page, can be grouped into three categories:

1. Gender Harassment: Unwelcome behaviors that disparage or objectify others based on their sex or gender;
2. Unwanted Sexual Attention: Unwelcome behaviors of a sexual nature that are directed toward a person; and
3. Sexual Coercion: Pressure or force to engage in sexual behavior.

According to our survey results, approximately 14 percent of Federal employees experienced at least one of these 12 sexual harassment behaviors between 2014 and 2016. Women were more than twice as likely to experience sexual harassment, as 21 percent of women and 9 percent of men experienced one of these behaviors. Employees were more likely to experience gender harassment (10%) or unwanted sexual attention (9%) than sexual coercion (3%).

¹For brevity, we characterize employees who responded that they experienced any of the listed behaviors as having "experienced harassment." We note that survey data reflect employees' perceptions of their experiences, which may or may not meet the legal criteria for harassment. Detailed legal guidance regarding sexual harassment is included in 29 CFR §1604.11 and posted on the website of the U.S. Equal Employment Opportunity Commission.

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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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The 12 Sexual Harassment Behaviors Included on MSPB Surveys

Gender Harassment

- Derogatory or unprofessional terms related to sex or gender
- Unwelcome sexual teasing, jokes, comments, or questions*
- Exposure to sexually oriented material (e.g., photos, videos, written material)
- Exposure to sexually oriented conversations

Unwanted Sexual Attention

- Unwelcome invasion of personal space (e.g., touching, crowding, leaning over)*
- Unwelcome communications (e.g., emails, phone calls, notes, text messages, social media contacts) of a sexual nature*
- Unwelcome sexually suggestive looks or gestures*

Sexual Coercion

- Offer of preferential treatment in the workplace in exchange for sexual favors (quid pro quo)
- Pressure for sexual favors*
- Pressure for dates*
- Stalking (e.g., unwanted physical or electronic intrusion into your personal life)*
- Sexual assault or attempted sexual assault*

Items followed by an asterisk () were included on both the 1994 and 2016 surveys.

In terms of labeling behaviors, we found that about 95 percent of Federal employees agreed that the sexual coercion behaviors clearly indicated sexual harassment. Narrative comments indicated that this percentage was not even higher because some respondents viewed sexual assault or stalking as criminal conduct rather than sexual harassment. Federal employees were also very likely (90% or more on each item) to agree that the unwanted sexual attention behaviors should be regarded as sexual harassment. In contrast, there was somewhat less agreement regarding certain types of gender harassment behaviors. Although over 90 percent of respondents agreed that unwelcome sexual teasing, jokes, comments, or questions, or the use of derogatory terms based on sex or gender reflect harassment, opinions were more divided regarding exposure to sexually oriented conversations (82%).

Interestingly, our survey data suggest there is no longer a gap between men and women in terms of whether behaviors are viewed as sexual harassment. For the eight behaviors that were included on the 1994 and 2016 surveys, there is virtually no difference in responses between men and women, with the gap being closed by increasing agreement among men that each behavior does reflect sexual harassment.

As Federal employees move toward greater consensus regarding which behaviors should be identified as sexual harassment, these behaviors are more likely to be avoided and therefore eliminated from the workplace. Although some organizations will have further to go to implement the changes needed to accomplish this goal, the end result will be to create a more appropriate and productive work environment for all employees. For more information on the results of MSPB's 2016 Merit Principles Survey regarding sexual harassment, please see the March 2018 *Research Brief: Update on Sexual Harassment in the Federal Workplace*. ❖

And the Survey Says...

Employee surveys help management act on organizational weaknesses—until they don't.

Employee surveys are important tools for identifying workforce trends, assessing the effects of management practices, and gauging whether existing policy creates optimal conditions to accomplish agencies' missions. MSPB has been conducting surveys of Federal employees in support of our studies mission for over 35 years. Our flagship survey, the Merit Principles Survey (MPS), helps evaluate the health of merit systems and the prevalence of prohibited personnel practices. We conduct the MPS every few years, and it contains items for longitudinal comparison as well as items geared to current areas of interest, including employee engagement, sexual harassment, and addressing poor performance. As important as these surveys are to informing the President, Congress, agency leaders, and other stakeholders about workforce issues, care should be taken in how often surveys are deployed and how results are used.

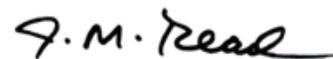
The landscape of Federal employee surveys is dominated by the Office of Personnel Management's (OPM) Federal Employee Viewpoint Survey (FEVS). The FEVS grew out of a 2004 law mandating that agencies survey their employees annually on leadership policies and practices, work environment, rewards and recognition, professional development and growth, and the opportunity to contribute to achieving the organizational mission. FEVS results are made available to the public and are used by agencies to identify areas of perceived need for management improvement. MSPB has, however, voiced concerns about the use of employee surveys and the need for survey administrators to minimize their possible negative consequences. We most recently addressed it in our analysis of OPM's significant actions, contained in MSPB's *Annual Report for FY 2017*, and our concern continues as OPM kicks off a new FEVS this month.

First, there is a danger that FEVS results are being used to make organizational changes that are not meaningful. As noted by the Government Accountability Office (GAO) in its 2015 report *Additional Analysis and Sharing of Promising Practices Could Improve Employee Engagement and Performance*, some year-to-year changes may not be statistically significant but instead are caused by random variation. Without understanding the difference, managers may take action based on data that have limited meaning. Also, only 42 percent of 2017 FEVS respondents agreed that they believe the results of the survey will be used to make their agency a better place to work. Given that employees are less likely to respond to surveys if they feel their organizations will not use the data to make positive changes, it is interesting that 82 percent of Federal employees invited to take the FEVS either did not respond, said they did not know, or did not agree that the survey results would be used to make their agency a better place to work.

Second, MSPB is concerned that not enough time is allowed between survey administrations for organizations to appropriately analyze and act on survey results. One reason that employees may perceive their survey input is not being used may be that organizations simply do not have enough time to act on one year's survey results before the next year's survey is fielded. If agencies try to judge the results based on annual survey responses instead of longer-term trends, they could reach misleading conclusions. As GAO further stated in its report, organizational improvement takes time and does not neatly follow the FEVS survey cycle.

Finally, with an annual survey administration, we should worry about survey fatigue caused when employees are asked to fill out surveys too frequently. From 2004–2010, OPM administered a Governmentwide employee survey every other year. The response rates for these biennial surveys were all over 50 percent, with the highest response rate achieved in 2006 at 57 percent. Since then, the FEVS has been administered annually and response rates have fallen to under 50 percent, with the lowest response rate realized in 2017 at 45.5 percent. Survey fatigue is a likely driver in this drop.

Significant resources are expended designing, deploying, and acting on surveys, and results can have negative consequences for agency managers and leaders. MSPB's review of OPM's 2017 significant actions noted that OPM should consider periodically assessing whether these potential negative consequences are having an actual effect on the FEVS or the annual survey required by statute. If so, OPM should make changes to the FEVS process or make recommendations to Congress regarding the annual survey requirement. ❖



Director, Policy and Evaluation

Keys to Using Pay to Maximize Performance

A look at the benefits and risks of pay for performance and key success factors.

The *President's Management Agenda* (PMA) and OMB Memorandum M-17-22 call on Federal agencies to recommit to maximizing performance as well as to reassess and reform any human capital or performance management policies that are ineffective, inefficient, or fail to hold Government accountable. To that end, the PMA proposes restructuring how Federal employees are compensated and rewarded, moving from the current General Schedule system toward one that places a greater emphasis on performance-based pay.

Compensation systems with enhanced pay for performance elements are not new to the Federal Government, having already been widely debated, authorized, and, in some agencies, rescinded. Given the potential promises and pitfalls, we outline the benefits and risks of pay for performance and highlight elements of an effective system, drawing on MSPB's 2006 report *Designing an Effective Pay for Performance Compensation System*.

What are the potential benefits and risks of pay for performance? If designed and implemented properly, a pay for performance system can do the following: (1) communicate and reinforce organizational values and goals; (2) aid in the recruitment, recognition, and retention of highly skilled, high-performing employees; and (3) make more efficient and strategic use of funds. However, a pay for performance system that is poorly designed or implemented can be ineffective or counterproductive. For example, a system that rewards quantity of work may increase output at the expense of quality; a system that focuses on individual contribution could devalue important but intangible aspects of organizational performance, such as teamwork. Also, a system that lacks adequate safeguards may be viewed as unfair, potentially producing a culture of mistrust and division instead of the intended focus on performance and positive outcomes.

What are the essential features of an effective pay for performance system? Maximizing the benefits and minimizing the risks of a pay for performance system require deliberation and persistence. The table below summarizes seven essential features of an effective pay for performance system. As shown, it is not enough to get the *policy* right; even a well-conceived system may fail without good *practice*.

Seven Features of a Successful Pay for Performance Environment

Organizational Culture	The organizational culture and leadership support the principle and practice of pay for performance through words and actions. Open communication and trust across all levels of the organization must be present.
Training	Advance and continuous training and education on how the pay for performance system works and on the values underlying the system.
Effective Supervision	Supervisors treat employees fairly when assigning work, evaluating performance, and allocating rewards. Supervisors also monitor and document employee performance, providing frequent, timely, and accurate feedback.
Performance Evaluation	Performance evaluations reliably distinguish between levels of performance, capture the most critical outcomes and behaviors, omit the least critical outcomes, and are clearly understood by all employees.
Fairness	The pay for performance system includes checks and balances to ensure fairness and pay and bonuses are distributed based upon merit-based performance measures.
Funding	To ensure sufficient motivation, adequate funding is available so that employees receive compensation that corresponds to their efforts and contributions.
Evaluation	Systematic and ongoing evaluation and assessment of the extent to which the pay for performance compensation system is accomplishing the desired outcomes fairly, efficiently, and effectively is incorporated as part of the system.

SOURCE: MSPB, *Designing an Effective Pay for Performance Compensation System*, p. 40

Introducing a pay for performance system is not a simple process. Agencies must design a system that is compatible with their mission, culture, and available resources. Then, they must implement the system, which includes monitoring and honoring the system's commitments to pay for performance. The Federal Government's track record suggests that success is possible but also that substantial and sustained investment of political and financial capital are necessary. ❖

Temporary and Term Appointments

Temporary and term appointments can help agencies address the changing work environment.

Policy makers, researchers, and the media have focused attention on how the move towards knowledge-based work is changing the traditional structure of work. Couple that with employees’ desire to have more flexibility in choosing assignments and setting their work schedules and workload, and the trend toward the “gig” economy—or relying on short-term freelance workers to perform jobs on demand—is gaining steam. The Federal civil service rules are not really conducive to this trend, but if agencies want to hire employees for a set period of time, two options are temporary and term appointments.

When deciding to use a temporary or term appointment, agencies should be aware of the rules, regulations, and benefits of these appointments. To assist that effort, we have outlined some of the key considerations below. More detailed information can be found in the Code of Federal Regulations, 5 CFR § 316, Temporary and Term Employment.

Temporary Appointment	Term Appointment
Length	
Appointments cannot exceed 1 year, but can be extended for a total of 2 years. There are additional exceptions to the length, explained in 5 CFR 316.401.	Appointments are more than 1 year, but cannot exceed 4 years.
Benefits	
Appointees are not eligible for retirement or life insurance. They are eligible for health benefits and leave accrual after meeting certain time requirements.	Appointees are eligible for Federal benefits including retirement, leave accrual, health benefits, and life insurance.
Selection Process	
Agencies can use competitive-examining procedures, direct hire authority, or other applicable noncompetitive temporary appointments for which applicants are eligible.	
Competitive Status	
Appointees do not obtain competitive status or reinstatement rights, and they cannot be noncompetitively converted to a permanent appointment.	
Probationary Period	
None.	The first year is a trial period and agencies can terminate the employee at any time during that year.
Due Process Rights	
None.	Term employees are covered by 5 U.S.C. § 4303 and 5 U.S.C. § 7511 for adverse actions.
Reduction in Force Coverage	
None. Appointment may be terminated at any time.	Appointees are covered by reduction in force (RIF) procedures and are placed in tenure group III. To remove a term employee prior to the expiration of the appointment and for a nonadverse action, RIF procedures must be used.
Pay Increases	
Appointees are not eligible for within-grade increases and may not be promoted, demoted, or reassigned to another position.	Appointees are eligible for within-grade increases and may be promoted, demoted, or reassigned to another position within the existing term project.

Temporary and term appointments can be of great use for short-term projects, to staff programs for a limited time, or to fill needs during periods of budgetary uncertainty. However, agencies need to strategically plan for these projects. The competitive-examining process can be long and labor intensive. Recruiting applicants for a short-term job that provides limited benefits may be difficult. Also, knowing precisely how long the employee is needed for a term appointment is crucial both to avoid running a RIF to terminate employees and to help employees plan their transition to a future job or work assignment. ❖

The Emotional Side of Effective Leadership

Survey data shows a link between emotional competence and performance.

There's a common belief that emotion is the enemy of reason, and that strong and effective leaders should neither have nor acknowledge emotions. However, research suggests that effective leadership and decision making demand both emotional and intellectual competence. Emotional competence (EC) is the ability to understand one's own and others' emotions and to display emotions appropriate to the situation.¹ This ability has four distinct aspects:

1. Self-awareness—the ability to accurately assess and understand our own and others' feelings;
2. Self-management—the ability to regulate our internal emotional states and self-motivate to act constructively;
3. Social awareness—the ability to interpret the emotional environment and behave in a manner appropriate to that environment and the social context; and
4. Relationship management—the ability to elicit desirable (or inhibit undesirable) emotional responses in others.²

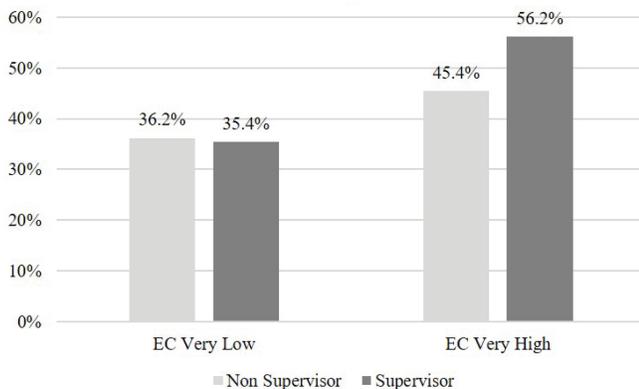
EC is particularly important in dynamic and complex work environments, such as the Federal Government. Federal employees must make informed and ethical decisions in the face of resource constraints, competing values and objectives, and often great stress while building and maintaining healthy relationships with supervisors, peers, and subordinates. The “hard skills” of planning, organizing, directing, and coordinating are necessary but not sufficient. Indeed, the ability to make and successfully implement a well-reasoned decision may depend more on EC than on those hard skills.

Consistent with this logic, researchers who conducted a wide-ranging study of job performance found that EC was the best differentiator between high and typical performers.³ Analysis of data from MSPB's 2016 Merit Principles Survey indicates that EC is also important to success in Federal jobs. Using the survey data, we developed an EC score based on the average of five items that measure EC:

1. I help coworkers feel better about themselves.
2. I help coworkers deal with stresses and difficulties at work.
3. I attempt to keep the peace by calming clashes between coworkers.
4. I am good at getting people to calm down.
5. I try to actually feel the emotions that I must display.

As illustrated, there is a clear relationship between self-reported EC (as measured by the composite of the five survey items) and job performance (as measured by a self-reported performance rating). Employees whose responses showed relatively low EC were considerably less likely to receive a top performance rating than those who demonstrated higher EC.

Percent of Top Performance Ratings by Level of Emotional Competence (EC)



If EC matters, can anything be done about it? Research summarized in our 2011 report *Making the Right Connections: Targeting the Best Competencies for Training* concludes that social competence, such as EC, is moderately trainable and courses are available for leaders and employees who wish to increase their EC. Leaders and employees who wish to succeed cannot afford to ignore or devalue emotions. Instead, they must understand and manage them—and assess and develop the skills needed to do that. ❖

¹This term is sometimes used interchangeably with emotional intelligence. We use the term emotional competence (EC) to emphasize behavior over innate ability or inclination and to emphasize that EC can be cultivated.

²Cherniss, C., & Goleman, D. (2001). *The emotionally intelligent workplace: How to select for, measure, and improve emotional intelligence in individuals, groups, and organizations*. San Francisco: Jossey-Bass. Chicago.

³Goleman, D. (1998a). *Working with emotional intelligence*. New York: Bantam Books.

Making Better Use of the Probationary Period

Improving use of the probationary period starts with improving communication.

When a hiring manager selects a new employee, is that the end of the hiring process? In many cases, no. Most employees who are new to Federal service or new to supervisory or management positions have to serve a probationary period, during which the employee can be removed from the position if performance is not satisfactory. Therefore, MSPB has long viewed the probationary period as an extension of the applicant assessment process.

MSPB's research has shown that the probationary period is not used extensively to separate employees who are not able to perform in their new positions. We have also identified a number of barriers that make it difficult to use the probationary period fully. However, there are many steps agencies can take to improve their ability to use the probationary period. A good place to start is with communicating with probationers and their supervisors about the process. Many of these steps were discussed in MSPB's prior research and have since been integrated into the "Ensuring a Qualified Civil Service Act of 2017" (or the EQUALS Act), which has been working its way through Congress. The good news for agencies is that these steps do not actually require legislation—agencies can integrate them into their probation programs today.

Communicate with probationers: Before they accept a job, candidates need to understand that they will be required to serve a probationary period, what they need to do to succeed, and the consequences for failing. This communication should occur through job opportunity announcements, job offer documentation, and discussions with the Human Resources (HR) staff.

Once candidates accept the position, regular communication between probationers and their supervisors is critical to effectively using probationary periods. Probationers need to understand how they are doing throughout the process and what the agency will do to help them succeed in the new position. Therefore, supervisors need to establish clear performance standards, set benchmarks for successful performance, assess and strive to meet training needs, evaluate performance, and regularly communicate with probationers to let them know how they are doing.

Prepare probationers' supervisors: Probationers' supervisors have the primary responsibility for administering the probationary period. Therefore, they should be properly prepared to carry out their responsibilities. Supervisors should receive training regarding their role during the probationary period, how to manage probationers' performance, and the process for finalizing probationers' selections at the end of the period.

Establish probationary period touchpoints: HR should have a consistent process to notify supervisors (1) when a new hire is required to serve a probationary period, (2) at the midpoint of the probationary period, and (3) when the probationary period is coming to an end. Although the supervisor should be keeping track of this information already, timely communication from HR will support the supervisor's efforts.

Require certification of successful completion: Per current regulations, probationers' appointments are automatically finalized unless supervisors or HR staffs take specific action to intervene. To ensure that underperforming probationers do not slip through the cracks, agencies can institute internal processes that require supervisors to proactively certify that probationers have met the requirements of probation before the end of the period. This step would create more accountability for the decision whether to keep the new employee. Just keep in mind that because regulations do not require certification, lack of certification is not grounds for termination. Therefore, the agency must keep on top of the process.

These few simple steps may not solve all of the problems with administering the probationary period, but they can help improve knowledge and accountability. ❖

Select MSPB Probationary Period Resources:

The Probationary Period: A Critical Assessment Opportunity, 2005

"Barriers to Effectively Using the Supervisory Probationary Period," *Issues of Merit*, Winter 2018

"Probationary Periods: A Missed Opportunity to Address Poor Performance," *Issues of Merit*, Spring 2015



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