



Agency Leader Responsibilities Related to Prohibited Personnel Practices May 2021

In Brief

The prohibited personnel practices (PPPs) are a list of fourteen (14) actions that agency officials are proscribed from committing. (An abbreviated copy of the PPPs is in Appendix A.) The responsibility to prevent PPPs rests with every official, but the law expressly directs the head of each agency to:

- (1) Propose disciplinary action against supervisors when certain entities determine that the supervisor committed one or more of three particular PPPs;
- (2) Enforce “applicable civil service laws, rules, and regulations and other aspects of personnel management”;
- (3) Ensure that employees are educated regarding their whistleblowing rights, including the remedies available in the event of retaliation;
- (4) Ensure that support of whistleblowers’ rights and protections are part of the performance evaluation of supervisors; and
- (5) Act to prevent PPPs.¹

While this publication discusses those responsibilities,² they—and the statute—do not exist in isolation. The laws pertaining to the PPPs were enacted to serve a particular purpose: create and sustain an ethical, merit-based civil service. As explained in prior publications, a civil service that is ethical, supports the merit principles, and avoids PPPs is better able to serve and protect the American people.³ Complying with the laws discussed in this report furthers that goal. However, compliance with the law is not a substitution for commitment to this broader vision. (Appendix B illustrates actions that an agency head can take to demonstrate that commitment and meet the five responsibilities listed above.)

Agency Heads Must Propose Discipline for Three Particular PPPs

In 2017, Congress enacted the Dr. Chris Kirkpatrick Act, codified at 5 U.S.C. § 7515. This act imposes obligations on the head of an agency to propose a disciplinary action following a determination that a supervisor in that agency has committed any of three particular PPPs, as discussed below.⁴

¹ 5 U.S.C. §§ 7515, 2302(c)(2), 4302(b).

² This publication focuses on those obligations and tasks that are most likely to arise; it is not exhaustive. For example, under 5 U.S.C. § 3352, an agency head may be obligated to review a denial of a transfer request from the victim of whistleblowing retaliation and notify the Merit Systems Protection Board (MSPB) of the outcome. To date, MSPB has no record of receiving such a notice.

³ U.S. Merit Systems Protection Board, *What is Due Process in the Federal Civil Service* (2015), at 3-6 (describing the problems with a spoils system); *Prohibited Personnel Practices: Employee Perceptions* (2011), at 37 (showing a correlation between perceived PPPs and employee engagement); *Managing Public Employees in the Public Interest: Employee Perspectives on Merit Principles in Federal Workplaces* (2013), at 18-19 (showing the relationship between certain merit system principles and employee engagement and retention); *Perceptions of Prohibited Personnel Practices in the Federal Civil Service* (2019), at 13 (showing the relationship between PPPs and employee engagement and retention). Publications available at www.mspb.gov/studies.

⁴ 5 U.S.C. § 7515. The statute adopts the definition of “supervisor” codified at section 7103(a), which states that “ ‘supervisor’ means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which

Applicable PPPs

The Kirkpatrick Act’s requirements with respect to proposing discipline apply to PPPs numbered 8, 9, and 14.⁵ PPP 8 addresses taking or threatening to take a retaliatory action against a whistleblower. PPP 9 addresses taking or threatening to take a retaliatory action against a person who exercises their appeal, complaint, or grievance rights; testifies for or assists an individual exercising such rights; cooperates with an inspector general or the Special Counsel; or refuses to obey an order that would require an individual to violate a law, rule, or regulation. PPP 14 involves accessing the medical record of an employee or applicant as part of the commission of any other PPP. For ease of reference, we will refer to these three PPPs as “Kirkpatrick PPPs.”

Applicable Determinations

The Kirkpatrick Act applies if any of the following entities determines that a supervisor committed a Kirkpatrick PPP:

- The head of the agency employing the supervisor;
- An administrative law judge;
- MSPB;
- The Special Counsel (SC);
- A judge of the United States; or
- The Inspector General (IG) of the agency.⁶

The Kirkpatrick Act does not state what constitutes a determination that a Kirkpatrick PPP was committed or how to determine *who* committed the PPP in question.

Required Actions

If a Kirkpatrick Act determination occurs, the head of the agency shall, for a first offense, propose a suspension of no less than three days, although the agency head may propose an additional penalty, such as a reduction in grade.⁷ For a second offense, the agency head shall propose a removal.⁸ While many responsibilities assigned to the head of an agency can be delegated (including the authority to act as deciding official in a traditional adverse action), the law explicitly states that this responsibility *may not be delegated*.⁹ Also, although the agency head should exercise judgment when deciding to *implement* the proposed action, the *proposal* itself is not discretionary.¹⁰ The law states that the agency head “shall propose” the required action.¹¹

includes firefighters or nurses, the term ‘supervisor’ includes only those individuals who devote a preponderance of their employment time to exercising such authority.” 5 U.S.C. § 7103(a)(10).

⁵ 5 U.S.C. § 7515(a)(2).

⁶ 5 U.S.C. § 7515(b)(1). Although “Office of Special Counsel” and “OSC” are the typical ways to refer to this agency, this brief uses “Special Counsel” and “SC” for consistency with the statutes under discussion.

⁷ 5 U.S.C. § 7515(b)(1)(A).

⁸ 5 U.S.C. § 7515(b)(1)(B).

⁹ 5 U.S.C. § 7515(b)(3).

¹⁰ Compare 5 U.S.C. § 7515(b)(2)(B)(2) (“if the head of the agency in which the supervisor is employed determines”) with 5 U.S.C. § 7515(b)(1)(A) (“shall propose”) and 5 U.S.C. § 7515(b)(1)(B) (“shall propose”).

¹¹ 5 U.S.C. § 7515(b)(1).

Discipline under the Kirkpatrick Act

The procedures to be followed for a Kirkpatrick action (5 U.S.C. § 7515) differ in some respects from those for more traditional adverse actions under section 7513. Section 7515 explicitly states that particular provisions of section 7513 will not apply, while other provisions of section 7513 will apply.¹² Thus, an agency taking action under the Kirkpatrick Act may neither disregard section 7513 entirely nor mechanically comply with all its particulars. Appendix C presents selected similarities and differences in a tabular format.¹³

The Kirkpatrick Act must be read carefully to fully understand its coverage and restrictions. For example, while the PPP statute (5 U.S.C. § 2302) applies to “[a]ny employee who has authority to take, direct others to take, recommend, or approve any personnel action,” the Kirkpatrick Act is limited to “supervisors” as defined by section 7103(a).¹⁴ Additionally, the Kirkpatrick Act definition of a PPP does not encompass all 14 of the PPPs enumerated in section 2302. One subsection of the statute states that it applies if the supervisor is determined to have committed a “prohibited personnel practice,” but another subsection states that “the term ‘prohibited personnel action’ means taking or failing to take an action in violation of paragraph (8), (9), or (14) of section 2302(b) against an employee of an agency.”¹⁵ The Kirkpatrick Act also does not explicitly address the question of recommending, approving, or directing others to act, all of which are a part of 5 U.S.C. § 2302(b).

Agency Heads Must Enforce Civil Service Laws

Section 2302(c)(2) states that agency heads are responsible for “enforcing applicable civil service laws, rules, and regulations and other aspects of personnel management[.]”¹⁶ The title for section 7515—“Discipline of supervisors based on retaliation against whistleblowers”—specifies the Kirkpatrick Act’s purpose. Its limited application to sections 2302(b)(8), (9), and (14) reflects its narrow focus. The other PPPs retain their relevance for the agency head as laws with supporting rules and regulations that are equally important to the civil service and to merit-based workforce management.

Enforcing civil service laws is accomplished in multiple ways, such as: (1) implementing disciplinary actions in response to violations; (2) addressing systemic issues that permit the commission of improper personnel actions; and (3) establishing a culture where corrective actions are taken to undo improper personnel actions.

Implementing Disciplinary Actions

Agency policies and cultures should ensure that supervisors recognize the disciplinary actions under sections 7503 or 7513 that may be appropriate after a supervisor commits or attempts to

¹² 5 U.S.C. § 7515(b)(2)(C)(i) (stating that the action “shall be subject to the same requirements and procedures, including those with respect to an appeal, as an action under section 7503, 7513, or 7543” except as set forth in clause (ii)).

¹³ This table is simplified to illustrate key differences between the Kirkpatrick Act and Chapter 75 and does not present the full text or provisions of 5 U.S.C. §§ 7513, 7515.

¹⁴ Compare 5 U.S.C. § 2302(b) with 5 U.S.C. § 7515(a)(3) (defining “supervisor”).

¹⁵ Compare 5 U.S.C. § 7515(b)(1) (“has determined that the supervisor committed a prohibited personnel action”) with 5 U.S.C. § 7515(a)(2) (“the term ‘prohibited personnel action’ means taking or failing to take an action in violation of paragraph (8), (9), or (14) of section 2302(b) against an employee of an agency”).

¹⁶ The section of the statute pertaining to the merit system principles likewise instructs that agency heads issue internal “rules, regulations, or directives” that are “necessary to ensure that personnel management is based on and embodies the merit system principles.” 5 U.S.C. § 2301(c).

commit any PPP. Discrimination, political coercion, nepotism, or knowingly violating a veteran's preference rights are all PPPs, although they are not covered by the Kirkpatrick Act's requirement to propose an adverse action. To violate a law, rule, or regulation that implements a merit system principle (MSP) is also to commit a PPP.¹⁷ Meeting the obligation to enforce applicable civil service laws means that agency heads must take these offenses seriously. (Appendix A provides a simplified list of the fourteen PPPs.)

Addressing Systemic Issues

When an agency discovers that PPPs are occurring, the agency should examine how such practices were possible and seek ways to prevent their recurrence. This could mean changes in policy to limit opportunities for such violations in the future. One example is presented in MSPB's 2016 report on nepotism.¹⁸ Following an IG investigation finding repeated instances of that PPP, the Department of Justice (DOJ) enhanced its hiring system by adding measures to prevent nepotism. Possible preventive measures include better training for supervisors and other officials concerning the PPPs. (This is discussed more in the section below on education.)

Even when an official's actions do not clearly constitute a PPP, a reasonable suspicion that the official acted contrary to other laws, rules, or regulations may need to be addressed.¹⁹ An agency head is not fully enforcing the civil service laws if that agency head permits subordinate executives, managers, or supervisors to ignore the law.

Taking Corrective Actions

Agencies have an obligation to ensure that improper personnel actions do not stand. In *Avalos v. Department of Housing and Urban Development*, the rules were not properly followed when appointing an individual, Mr. Avalos.²⁰ The agency concluded that it could not prove a PPP had occurred, but there was "still an appearance of a prohibited personnel practice."²¹ The agency removed Mr. Avalos, and he appealed that action.²² On review, the U.S. Court of Appeals for the Federal Circuit held that the agency's "legitimate interest in removing the appearance of political influence in Mr. Avalos's appointment... promotes the efficiency of the service by improving compliance with merit systems [sic] principles."²³ The removal was therefore upheld.²⁴

The appropriate corrective action will depend on the particular circumstances and applicable rules. Agency officials should consult with their human resources advisors and attorneys to

¹⁷ 5 U.S.C. § 2302(b)(12). For more on how 5 U.S.C. § 2302(b)(12) is interpreted, see *U.S. Merit Systems Protection Board, Prohibited Personnel Practices: Employee Perceptions* (2011), at 23-24, available at www.mspb.gov/studies or *Prohibited Personnel Practices: Frequently Asked Questions*, <https://www.mspb.gov/ppp/ppp.htm>. For more on the merit system principles, see U.S. Merit Systems Protection Board, *The Merit System Principles: Keys to Managing the Federal Workforce* (2020).

¹⁸ U.S. Merit Systems Protection Board, *Preventing Nepotism in the Federal Civil Service* (2016), at 34-35, available at www.mspb.gov/studies.

¹⁹ We note that allegations of a PPP are not required for disciplinary action to be appropriate. In *Reynolds v. Department of Agriculture*, the Board affirmed the agency's removal of an employee who failed to disclose that his son worked for a company that the employee was responsible for inspecting. While this was not nepotism as defined by law, it was a violation of a policy intended to avoid improper conflicts of interest. *Reynolds v. Department of Agriculture*, 54 M.S.P.R. 111, 112, 114-15 (1992).

²⁰ *Avalos v. Department of Housing and Urban Development*, 963 F.3d 1360, 1364 (Fed. Cir. 2020).

²¹ *Id.*

²² *Id.*

²³ *Id.* at 1370.

²⁴ *Id.* at 1371.

determine how to implement a corrective action. Imposing corrective actions—in accordance with civil service rules—helps establish and cultivate a culture that respects civil service laws.

Agency Heads Must Ensure Employees Are Educated Regarding PPPs

Education for All Employees

By law, in consultation with the SC, the heads of agencies must ensure that:

employees of the agency are informed of the rights and remedies available to the employees under [the PPP provisions in title 5], including—(i) information with respect to whistleblower protections available to new employees during a probationary period; [and] (ii) the role of the Office of Special Counsel and the Merit Systems Protection Board with respect to whistleblower protections.²⁵

The law also specifies subjects of mandatory training and states that such training should be conducted “in consultation with the Special Counsel.” The SC’s certification program guidance specifically states that information “about the 14 PPPs” should be provided to both new and current employees.²⁶

Education for Agency Officials

Supervisors, managers, and executives are also agency employees. In addition to being educated about employee rights, they need to understand their own responsibilities.²⁷ By law, “[a]ny employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority” commit a PPP.²⁸ Understanding the PPPs and the rules for personnel actions can be critical for supervisors to avoid committing a PPP. For agency heads to meet their obligations to prevent PPPs, they should ensure that training is provided to any officials who have the authority to take, direct others to take, recommend, or approve personnel actions.

To effectively guide supervisors’ decisions, such training should do more than merely enumerate the PPPs; it should also provide context and cover relevant policies. For example, the 6th PPP states that an official must not “grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment[.]”²⁹ Supervisors will be better able to comply with that instruction if the training goes further and explains which preferences are—and are not—authorized.

Agencies should give particular attention to the orientation and education of agency heads and other senior leaders. As discussed, the law assigns to them specific responsibilities for the prevention and redress of PPPs, some of which (such as the Kirkpatrick Act provisions for agency heads) cannot be delegated. However, leaders who come from outside the civil service (such as

²⁵ 5 U.S.C. § 2302(c). This instruction expressly mentions education regarding section 2302 and chapter 12 of title 5. Section 2302 enumerates the PPPs. Chapter 12 is the part of the law pertaining to SC-initiated corrective actions and individual right of action appeals. Section 2302(c) requires that the information be given to new employees and that it be provided on the agency’s website. The training must include how to make a lawful disclosure of information that is specifically required to be kept confidential in the interest of national security.

²⁶ U.S. Office of Special Counsel, *Certification Program Overview*, available at <https://osc.gov/Pages/Outreach-2302Cert.aspx>.

²⁷ *Id.*

²⁸ 5 U.S.C. § 2302(b).

²⁹ 5 U.S.C. § 2302(b)(6).

private industry or the military) may not be familiar with the civil service rules and frequent turnover in leadership positions is quite common.³⁰ This can be problematic if agencies do not educate new leaders about the PPPs promptly and thoroughly.

In the section above on enforcing civil service laws, we noted that training may be an appropriate response to the commission of a PPP under certain circumstances. An example is training a supervisor who made a good-faith mistake because the supervisor did not understand the rules. However, if a person consciously chose to do the wrong thing, training that person may be a waste of resources. It may also send the message that there is no real consequence for deliberate wrongdoing. Some conduct—such as coercing subordinates into sexual relationships—is so clearly egregious that an official should not need to be told there is a PPP prohibiting it. Education or training should be used to address a lack of knowledge or a factual misunderstanding, rather than a failure to choose properly between “right and wrong.”³¹

Agency Heads Must Ensure Supervisors Are Evaluated Based on Their Support of Whistleblowers

While most agency head responsibilities regarding PPPs are codified in 5 U.S.C. § 2302, one is codified in section 4302, which deals with performance management. That section states that the head of the agency, in consultation with the Director of the Office of Personnel Management (OPM) and the Special Counsel, shall develop criteria to assess supervisors on the degree to which they respond constructively to whistleblowing disclosures, act responsibly to resolve such issues, and foster an environment in which employees feel they can make such disclosures. The criteria—for which agency heads are responsible—must include tracking the agreements the agency enters into that involve allegations of a particular supervisor engaging in a PPP. For these purposes, a PPP is any of the fourteen PPPs listed under section 2302(b).³²

Agency Heads Must Act to Prevent PPPs

Section 2302 of title 5 states that, “The head of each agency shall be responsible for preventing prohibited personnel practices[.]” It may sound self-evident, but the best way to prevent PPPs is not to tolerate PPPs. PPPs may occur in isolation, but they are more likely to be part of a pattern of accepted practices and a broader culture.³³

Data from the 2016 Merit Principles Survey (MPS) shows that a survey respondent who reports being personally affected by a PPP is more likely to say they experienced two or more PPPs instead of only one. The pattern was similar among respondents who observed a PPP without being personally affected. This is consistent with findings from other researchers that a culture

³⁰ See, e.g., Katherine Dunn Tempas, “Tracking Turnover in the Trump Administration,” *Brookings Institute* (Jan. 2021), available at <https://www.brookings.edu/research/tracking-turnover-in-the-trump-administration/> (showing that Presidents Reagan, H.W. Bush, Clinton, Obama, and Trump all had turnover of more than 50 percent in a four-year period); Government Accountability Office, *Political Appointees: Turnover Rates in Executive Schedule Positions Requiring Senate Confirmation* (1994), Report No. GGD-94-115FS, available at www.gao.gov.

³¹ U.S. Merit Systems Protection Board, “When Can Training Help Remedy Wrongdoing?” *Issues of Merit* (Fall 2016), available at www.mspb.gov/studies (discussing how the teaching of rules can enhance the effectiveness of preexisting integrity but cannot substitute for it).

³² Section 4302(b)(3)(B) states that the definition of a PPP is that provided in section 2302(a)(1)—which in turn states that a PPP is any part of section 2302(b).

³³ See, e.g., U.S. Merit Systems Protection Board, *Preventing Nepotism in the Federal Civil Service* (2012) at 28, available at www.mspb.gov/studies (explaining that an IG found nepotism in a particular DOJ division for a third time over a period of 8 years).

which permits certain unethical behaviors tends to be one where other unethical behaviors are prevalent.³⁴

Senior leaders set the tone for an ethical culture, as illustrated by MPS data on perceptions of PPPs. Table 1 shows that this ethical culture may be influenced to some extent through senior leaders' communications about the importance of ethical behavior, but the *demonstration* of ethical behavior is even more important.

Table 1: Perceptions of senior leaders' practices and reported experience or observation of PPPs (2016 MPS)

<i>Senior leaders at my agency demonstrate the importance of ethical behavior.</i>	PPP(s) Did Not Occur	PPP(s) Occurred
Agree	71%	29%
Neither Agree nor Disagree	37%	63%
Disagree	13%	87%
<i>Senior leaders at my agency communicate the importance of ethical behavior.</i>	PPP(s) Did Not Occur	PPP(s) Occurred
Agree	66%	34%
Neither Agree nor Disagree	39%	61%
Disagree	14%	86%

Other surveys reflect similar results. For example, among respondents to OPM's 2017 Federal Employee Viewpoint Survey (FEVS) who agreed that their senior leaders maintain high standards of honesty and integrity, 88 percent agreed that PPPs are not tolerated. The relationship between ethics and the PPPs is not coincidental. As noted, it was part of the rationale for codifying the PPPs in 1978. Prohibiting certain practices is one of the means to create and manage a merit-based civil service with an ethical culture.

There are many different ways that a cultural problem can come to the attention of an agency head. The FEVS and the MPS regularly contain questions about PPPs, with the FEVS being administered more often and the MPS containing more detail. Internal agency surveys can also include questions about PPPs and ethical cultures. IGs may issue reports regarding investigations of allegations that a PPP has occurred. Cases brought before the Equal Employment Opportunity Commission or MSPB can indicate problems, even if the case decisions do not specify which official committed the alleged offense. Large numbers of complaints to an internal Equal Employment Opportunity office can also be a warning sign.

When there are indications of a possible problem, the agency head has the responsibility to inquire, directly or through others (*e.g.*, order an investigation), and address underlying issues or practices.³⁵ In some cases, there may be several individuals whose improper conduct played a role

³⁴ See, *e.g.*, Sean T. Hannah, *et. al.*, "Joint Influences of Individual and Work Unit Abusive Supervision on Ethical Intentions and Behaviors: A Moderated Mediation Model," *Journal of Applied Psychology* (2013), Vol. 98, No. 4, at 590 (explaining that abusive supervision, whether experienced personally or vicariously, can negatively impact the ethical behaviors of others).

³⁵ Even a perception of PPPs can be harmful to the efficiency and effectiveness of the workforce. See, *e.g.*, U.S. Merit Systems Protection Board, *Prohibited Personnel Practices: Employee Perceptions* (2011) at 37-38; *Preventing Nepotism in the Federal Civil Service* (2016), at 61-63, available at www.mspb.gov/studies.

in the alleged PPP or unethical behavior. Each individual should be held to account for their own actions and initiatives (or lack thereof in instances of negligent supervision).

Establishing what happened and who is responsible can require a thorough and impartial investigation that follows and documents the evidence and opens new lines of inquiry when needed. IGs can be very useful for this task, as their staff are trained to follow professional audit, investigative, and inspection standards. While an IG operates under the general supervision of an agency head, an IG is independent with the right by law to have access to agency employees and records. Foremost, that independence means that even the head of the agency cannot “call off” an IG investigation, even if its direction or findings prove unpleasant. Nor may an agency head instruct an IG to reach any particular conclusion.³⁶ This gives IGs a level of credibility that is unlikely or impossible to attain if any person in the alleged offender’s chain of command conducts the investigation.

An agency leader asking an IG to investigate a specific event or specific widely-held perception helps prevent PPPs in the following ways: (1) the IG’s report will increase the agency leader’s knowledge about what is happening in that agency; (2) evidence gathered can be used to support any necessary adverse actions; and (3) requesting an impartial investigation communicates to employees that the agency leader is serious about ensuring a workplace free from PPPs. However, the IG is not the only avenue available for an agency to conduct an investigation. What matters most is that the investigation is conducted properly and has the necessary credibility.

There are many ways in which agency leaders can create a culture that reduces the likelihood of officials committing PPPs. These methods for preventing PPPs include—

1. Acting ethically and communicating that ethics matters.
2. Providing for an impartial internal review of personnel actions that may pose an elevated risk of a PPP.
3. Holding direct reports accountable if they commit a PPP or behave unethically.
4. Ensuring direct reports hold their own subordinates accountable for PPPs and ethical conduct (which may mean taking action against a direct report for negligent supervision—such as willful blindness to, or tolerance of, a subordinate’s misconduct). The Kirkpatrick Act will even require that the agency head personally propose discipline under certain conditions.³⁷
5. Initiating an investigation when there are warning signs, particularly if they indicate a broader problem in the organizational culture.
6. Educating employees on the PPPs, which includes educating supervisors on their obligations to avoid PPPs and to address PPP-related misconduct when it occurs in their workforce.
7. Communicating to the workforce that PPPs will not be tolerated and acting to ensure those words are not hollow.

³⁶ See Council of the Inspectors General on Integrity and Efficiency at <https://www.ignet.gov/content/frequently-asked-questions>.

³⁷ The law grants to the “agency” the authority to take suspension, demotion, and removal actions. 5 U.S.C. § 7513. However, unless a statute—such as the Kirkpatrick Act—requires a particular process, an agency must follow its own procedures, including any provisions designating the proposing and deciding official. See *Goeke v. Department of Justice*, 122 M.S.P.R. 69, ¶ 23 (2015) (finding the MSPB bound to enforce an agency’s voluntarily adopted disciplinary process until abandoned by the agency, even though no external law, rule, or regulation required that process).

Appendix A: Prohibited Personnel Practices

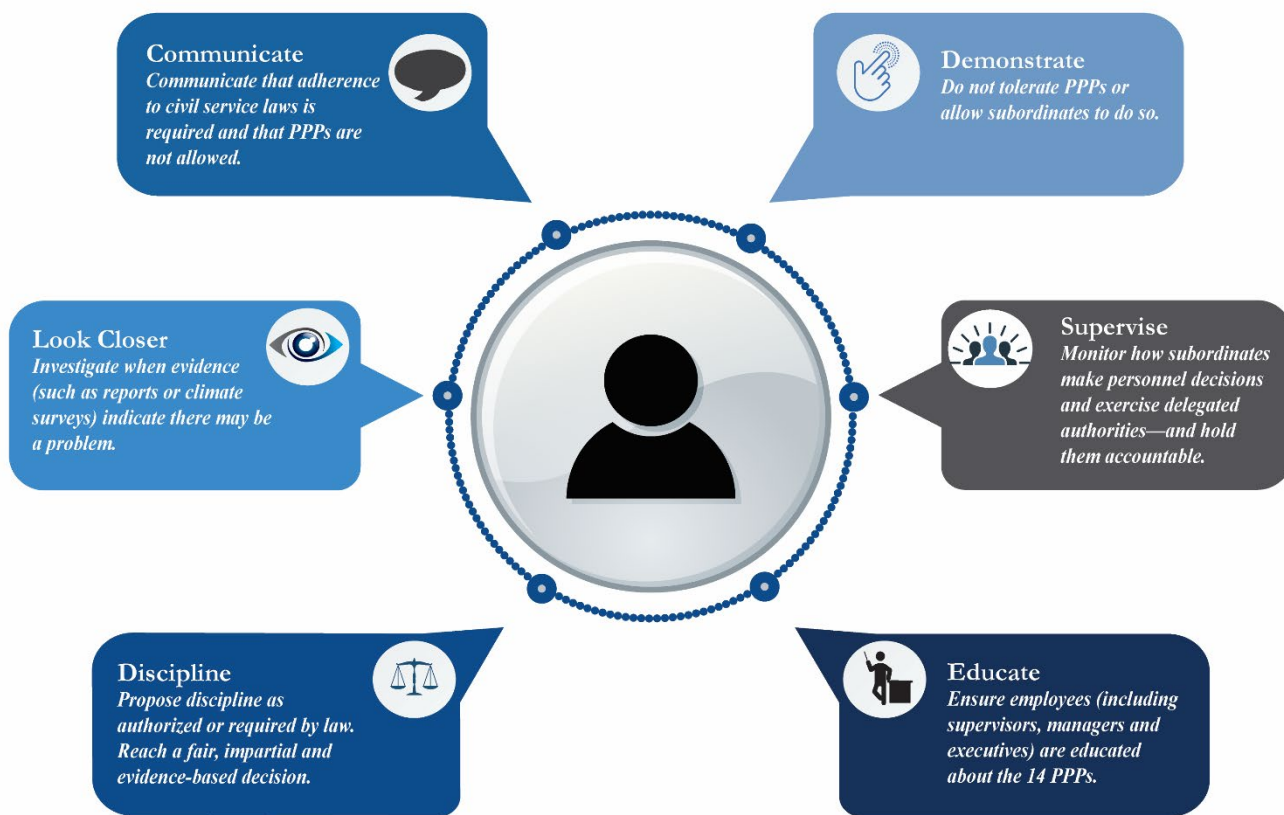
The prohibited personnel practices listed below are adapted from the statutory language that appears in section [2302 of title 5](#), United States Code. It is a prohibited personnel practice to:

1. Discriminate on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation;
2. Solicit or consider any personnel recommendation or statement not based on personal knowledge or records of performance, ability, aptitude, general qualifications, character, loyalty, or suitability;
3. Coerce an employee's political activity;
4. Deceive or obstruct any person with respect to such person's right to compete for employment;
5. Influence a person to withdraw from competition;
6. Grant any preference or advantage not authorized by law, regulation, or rule;
7. Employ or promote a relative;
8. Retaliate or threaten to retaliate against a whistleblower, whether an employee or an applicant;
9. Retaliate or threaten to retaliate against employees or applicants who exercise their appeal, complaint, or grievance rights; testify for or assist an individual in doing so; cooperate with an inspector general or the Special Counsel, or refuse to violate a law, rule, or regulation;
10. Discriminate on the basis of conduct which does not adversely affect performance;
11. Knowingly violate veterans' preference requirements;
12. Violate any law, rule, or regulation implementing or directly concerning the merit system principles;
13. Implement a non-disclosure policy or agreement unless the policy or agreement comports with the laws regarding whistleblower protection and disclosures to Congress or Inspectors General; or
14. Access the medical record of an employee or applicant as part of the commission of any conduct described above.

Appendix B: Actions to Meet Obligations Related to PPPs

Agency heads are responsible for: the prevention of PPPs;³⁸ the enforcement of civil service laws involving PPPs;³⁹ mandatory proposals of adverse personnel actions against supervisors who commit Kirkpatrick PPPs;⁴⁰ ensuring that performance objectives communicate that supervisors must support whistleblowers;⁴¹ and ensuring that employees are informed of their rights and remedies regarding prohibited personnel practices.⁴²

Below is a brief depiction of how different actions help an agency leader to meet their obligations under the law with respect to the PPPs.



³⁸ 5 U.S.C. § 2302(c)(2)(A).

³⁹ 5 U.S.C. § 2302(c)(2)(B).

⁴⁰ 5 U.S.C. § 7515.

⁴¹ 5 U.S.C. § 4302(b).

⁴² 5 U.S.C. § 2302(c)(2)(C).

Appendix C: Comparison of Traditional and Kirkpatrick Discipline⁴³

Provision	Traditional Discipline 5 U.S.C. § 7513 5 C.F.R. § 752.404	Kirkpatrick Act 5 U.S.C. § 7515
Employees Covered	Civil service employees in the competitive or excepted service (as defined in 5 U.S.C. § 7511).	A supervisor as defined by 5 U.S.C. § 7103(a).
Cause for Action	Employee engaged in conduct or performance that damaged the efficiency of the service.	Commission of a PPP, limited to 3 of the 14 PPPs (Nos. 8, 9, and 14).
Source of Allegation	Not specified.	Applies only when “the head of the agency in which a supervisor is employed, an administrative law judge, the Merit Systems Protection Board, the Special Counsel, a judge of the United States, or the Inspector General of the agency in which a supervisor is employed has determined that the supervisor committed a prohibited personnel action.”
Requirement to Propose an Action	None.	Action must be proposed if source of allegation above is met.
Required Severity of Proposed Penalty	Not specified.	First Offense: Not less than a three-day suspension plus any other action deemed appropriate. Second Offense: Not less than removal.
Enacted Penalty	Must be reasonable to the circumstances.	The proposed penalty shall be carried out if evidence supplied by the employee is “insufficient.”
Written Notice	Employee is entitled to (1) a written notice that states the reason(s) for the proposed action; and (2) receive a written decision.	
Access to Evidence	Employee is entitled to see the material upon which the agency is relying.	
Right to Representation	Employee is entitled to an attorney or other representative.	
Reply	Employee is entitled to at least 7 days to reply and furnish evidence in support.	Employee is entitled to 14 days to reply and furnish evidence in support. ⁴⁴
Timing of Action	Action may not be taken for 30 days following proposal absent reasonable suspicion of a crime.	No limitation specified beyond the period to reply to the notice of proposed action.
Delegation	The head of the agency may delegate the responsibility to determine if a PPP has been committed.	The head of the agency may not delegate the responsibility to determine if a PPP has been committed.
Standard of Proof for Action	Not specified.	Action must be taken unless employee provides evidence that the head of the agency deems sufficient to <i>not</i> take the action.
Standard of Proof on Appeal	Agency must show it is more likely than not that the alleged offense was committed (5 U.S.C. § 7701).	

⁴³ This table is simplified to illustrate key differences between the Kirkpatrick Act and traditional discipline. It does not present the full provisions of 5 U.S.C. §§ 7513, 7515.

⁴⁴ We use the term “employee” here to aid the comparison, noting again that the Kirkpatrick Act covers employees in a supervisory position.