Highlights of Reports Issued by the U.S. Merit Systems Protection Board

THE CHAIRMAN

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The U.S. Merit Systems Protection Board (MSPB) is a Federal agency that was established in 1978 as the successor to the U.S. Civil Service Commission to serve as the guardian of Federal merit systems. MSPB's mission includes conducting special studies related to the civil service and merit systems in the executive branch, focusing on adherence to the merit system principles and avoidance of prohibited personnel practices. Our goal is to provide policymakers and practitioners with sound, principled, nonpartisan analysis and recommendations for managing the Federal civil service.

Merit system study reports are formally submitted to Congress and the President. However, these reports can be useful to anyone seeking information on: (1) issues facing the Federal workforce; (2) human resources policies and practices in the civil service; or (3) actions that policy makers and leaders can take to manage the Federal workforce more efficiently and effectively. Our reports commonly include:

- Descriptions of laws, policies, and practices related to a specific aspect of Federal Government human resources management, such as hiring, pay and recognition, employee engagement, or employee relations;
- Discussion of issues, successes, and challenges in Federal workforce management;
- Presentation and analysis of relevant data, such as workforce statistics and results of employee and management surveys; and
- Recommendations for policy makers, Federal agencies, Federal managers, or human resources specialists.

This catalog contains one-page overviews of some of our recent reports. The reports summarized in this catalog and previous reports are available at no cost at www.mspb.gov/studies.

We appreciate your interest in MSPB's work. If you have questions about this catalog, a study report, or the merit system studies program, please email our Office of Policy and Evaluation at studies@mspb.gov.

Susan Tsui Grundmann

The Merit System Principles: Guiding the Fair and Effective Management of the Federal Workforce

Research Highlights

September 2016

What are the Merit System Principles (MSPs)?

- Nine basic standards governing the management of the executive branch workforce.
- The foundation for an effective, merit-based civil service.
- Part of the Civil Service Reform Act of 1978 and can be found at 5 U.S.C. § 2301(b).

Do Federal employees believe their agencies uphold the MSPs?

Our research shows that Federal employees believe their agencies have varying success—and substantial room for improvement—in achieving the vision of the MSPs. Employees agreed that their agency:

- Succeeds at preventing discrimination and holding employees to high standards of conduct.
- Does not succeed at addressing poor performers and refraining from favoritism.

What is driving these beliefs?

MSPB administered a questionnaire to agency Chief Human Capital Officers and human resources staff regarding training on the MSPs and Prohibited Personnel Practices (PPPs) for different employee groups. The results showed that employees at all levels lack knowledge about how to adhere to the MSPs and avoid PPPs.

- **Approximately 20% of respondents said that nonsupervisory employees and political appointees receive <u>no</u> systematic training on the MSPs.** Given their substantial authority over personnel policies and decisions, it is critical that all political appointees receive training so they understand their legal and ethical obligations under the MSPs. Additionally, if nonsupervisory employees misunderstand their rights and responsibilities under the MSPs, they may fail to speak up or seek redress when appropriate to do so, or view agency decisions and practices as improper, even when they are both legal and proper.

- **Approximately 80% of the respondents indicated that all new supervisors receive training on the MSPs; however, only 60% indicated that refresher training was provided for supervisors.** Experienced supervisors should receive periodic training on the MSPs and PPPs, perhaps as an expansion of the training and development requirements of 5 C.F.R. § 412.202, because policies may change over time and supervisors may benefit from reminders regarding how the MSPs and PPPs relate to their actions.

What can agencies do to foster adherence to the MSPs?

- Ensure that all employees receive training that is timely, tailored to their level of responsibility, provided by experts, and delivered effectively.
- Hold supervisors, managers, and executives accountable through internal agency mechanisms for adhering to the MSPs and avoiding PPPs.
- Enforce accountability through external agencies, when necessary.

For a copy of the full report, please visit www.mspb.gov/studies

Preventing Nepotism in the Federal Civil Service

Research Highlights

June 2016

What is nepotism?

The definition of nepotism can vary based upon the law in question.

The criminal statute, 18 U.S.C. § 208, applies to participating in decisions and other official matters in which the employee has a financial interest in the outcome as a result of a personal relationship. These covered relationships include, but are not limited to, the employee's spouse and minor children.

The civil service law prohibition, 5 U.S.C. §§ 2302(b)(7) and 3110, applies to personnel actions involving the employee's father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

There are also regulations pertaining to ethical conduct, such as 5 C.F.R. § 2635.502, which cover close familial relationships, members of the same household, and certain business relationships.

What can employees do to avoid committing nepotism?

Regardless of which law or regulation is involved, the three main steps that an employee should undertake are:

(1) consulting the agency's ethics advisor about any potential conflict of interest;

(2) disclosing the issue to a supervisor or other suitable agency official; and

(3) obtaining permission to recuse himself or herself from involvement in the matter that involves a relative or other person with whom the employee has a covered relationship.

What can agencies do to limit the potential for nepotism to occur?

Agency leaders and those to whom they have delegated personnel authorities have an obligation to prevent nepotism. Means by which this may be achieved include:

⇒ Making better use of human resources (HR) staff as partners to advise officials on the rules and to raise warning alerts if personnel actions seem suspicious.

⇒ Requiring additional certifications that personnel actions have not been improperly influenced where the risk-benefit analysis indicates that the work involved in the certifications is appropriate to the level of protection that is needed.

⇒ Educating executives, managers, supervisors, and employees about the rules of ethical conduct, including what it means to avoid nepotism and how they can achieve a merit-based workplace.

⇒ Ensuring that competitions for positions are as fair and open as is practical for the positions in question.

⇒ Holding officials accountable for their own conduct and for supervising the conduct of their subordinates.

For a copy of the full report, please visit www.mspb.gov/studies

Research Highlights

December 2015

Training and Development for the Senior Executive Service: A Necessary Investment

The Vision and the Business Case

The Federal Government is expected to accomplish its many missions with fewer workers and financial resources while meeting new challenges, improving services, and increasing efficiency and effectiveness. The Senior Executive Service (SES), a cadre of executives who provide day-to-day leadership of Federal agencies and serve as the link between political appointees and the career workforce, plays a critical role in agency success or failure. Research confirms that appropriately designed, delivered, and implemented training and development can improve individual and organizational performance. Accordingly, the Civil Service Reform Act of 1978 envisioned that Federal agencies would manage the SES so as to "provide for the initial and continuing systematic development of highly competent senior executives."

The Reality

MSPB's research indicates that "systematic development" of career senior executives is frequently more a vision than a reality. Practices for managing senior executive training and development vary widely across Federal agencies, and some agencies reported that practices varied internally. Both the SES and the broader public are served poorly by this lack of consistency and coordination. Results of a 2011 survey of the SES conducted by the U.S. Office of Personnel Management suggest that an unacceptably high number of senior executive receive insufficient guidance and support for training and development.

The State of SES Training and Development

50%	of senior executives **did not** have an Executive Development Plan—a document expressly required by regulation.
30%	of senior executives reported that their developmental needs were **not** met.

Source: U.S. Office of Personnel Management, *Senior Executive Service Survey Results for Fiscal Year 2011*, May 2012.

The Way Forward

In light of the importance of the SES role and heightened attention to agency performance and SES accountability, Federal agencies should view executive training and development as a necessary investment rather than a discretionary activity or expenditure. Accordingly, MSPB recommends that Federal agencies take a methodical and coordinated approach to the training and development of senior executives. To help agencies develop and implement a strategy that suits executives' needs and aligns with agency goals and resources, the report—

- Identifies common barriers to training and development;
- Offers strategies to mitigate those barriers; and
- Examines training and development activities and provides information on their background, advantages, disadvantages, effectiveness, and costs.

For a copy of the full report, please visit www.mspb.gov/studies

What is Due Process in Federal Civil Service Employment?

Research Highlights

May 2015

Due process of law is a right, provided by the U.S. Constitution, that prohibits the Government from depriving a person of his or her property without a procedure to ensure that the action is just. The U.S. Supreme Court has repeatedly held that once the Government chooses to limit the circumstances under which a position can be taken away (*e.g.,* no retaliation for whistleblowing activities or membership in a particular political party), the employee has a constitutional property right in the position, requiring the use of due process for the deprivation of the property.

In the words of the Court, "The right to due process is conferred, not by legislative grace, but by constitutional guarantee. While the legislature may elect not to confer a property interest in public employment, it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards."

Due process "couples" the pre- and post-deprivations process, meaning that the more robust the post-deprivation process (*i.e.,* a hearing before an impartial adjudicator), the less robust the process must be before the action occurs. However, providing the individual with notice of the Government's intentions, and a meaningful opportunity for the individual to respond before the action takes place, are bare minimums, without which the action cannot be constitutional.

Adverse Employment Actions in the Federal Civil Service: A Few Facts

Perception	*Reality*
There are no legal barriers to firing an employee in the private sector.	Many of the laws that apply to removing employees in the Federal civil service also apply to private sector employment or have a similar counterpart, such as the Civil Rights Act of 1964 and the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).
An agency must pay a salary to an employee who has been removed until any appeal has been resolved.	An employee does not continue to receive a salary once removed. If the action is found to have been unwarranted, then reinstatement and back pay may be awarded. But, there is no pay while removed.
Agency leaders have no authority to serve as proposing or deciding officials in title 5 adverse actions.	Title 5 empowers the *agency* to take an adverse action. If agency leadership chooses to delegate the proposal or decision authority to lower levels, then it cannot interfere with the decision-making process of those delegees. But, prior to the assigned decision-maker's involvement in a particular case, current statutes permit delegations to be abandoned or modified by the agency at will.
If an employee is suspected of a crime, the agency cannot fire the employee for the same underlying conduct until the criminal matter is resolved.	The agency is permitted to remove the employee without waiting for criminal charges to be filed. If the removal is appealed to MSPB and criminal charges are filed, then MSPB may stay its proceedings until the criminal matter is resolved. However, the individual remains removed without pay during that period.

For a copy of the full report discussing why there is due process in the civil service and how it operates, please visit www.mspb.gov/studies

The Impact of Recruitment Strategy on Fair and Open Competition for Federal Jobs

Research Highlights

January 2015

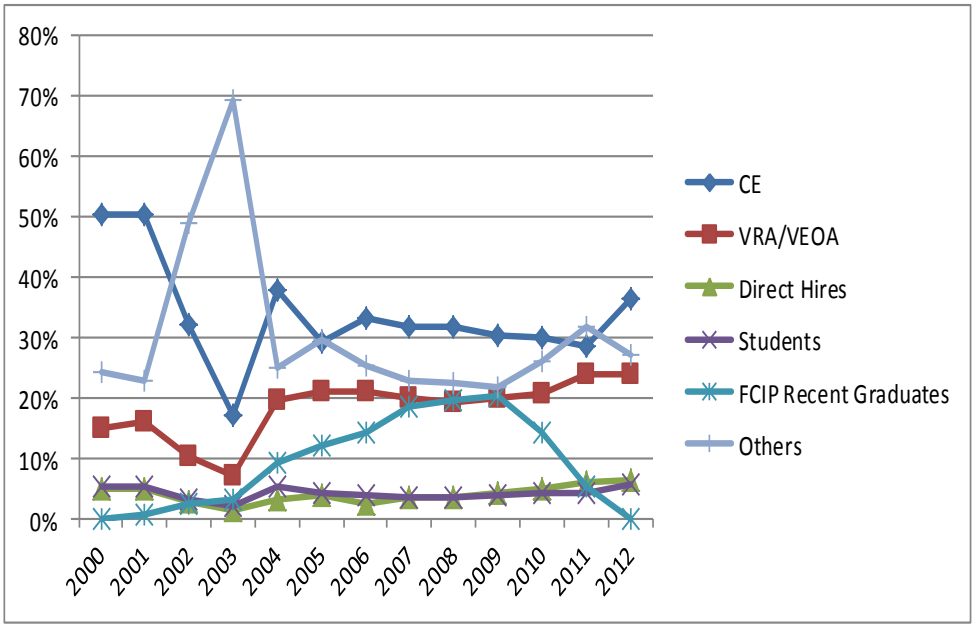
Since the Pendleton Act of 1883, it has been a basic precept that entry into the federal civil service should be based on merit after fair and open competition. Congress codified this ideal as part of the first merit principle in 1978 via the Civil Service Reform Act. However, the complexities of Federal civil service laws, regulations, and practices make it difficult to define what constitutes "fair and open competition."

While what is "fair" or "open" often depends on one's perception, there are some factors that threaten the principle of fair and open competition. These include: a proliferation of hiring authorities that restrict the size and composition of the applicant pool; overuse of restrictive hiring authorities and practices; the possibility that some managers may deliberately misuse hiring flexibilities to select favored candidates; and some HR staff placing customer service to individual supervisors over service to the agency and its obligations to protect merit and avoid prohibited personnel practices.

Each step in the recruitment process is an opportunity to keep the recruitment action fair and open—or to close it to some degree. However, it is often hard to determine, at any step, which choice best serves the principle of fair and open competition and the broader public interest.

How agencies announce their vacancies affects every part of the recruitment process. For example, job vacancies were frequently announced to a wide audience, in 2012, but only 37 percent of new employees were hired via traditional competitive examining procedures.

Authorities used to hire new employees, 2000-2012



Additionally, since 2000, the use of restrictive hiring authorities has increased, while traditional competitive examining has decreased. This may be an indication that there may be some difficulty with the competitive examining (CE) authority. That is, agencies may perceive some difficulty or inefficiency with CE, such that approximately two out of every three hiring actions avoid using it to make a selection. The decreased use of CE is a problem because CE is the only hiring authority that is open to all qualified U.S. citizens. As a result, as more restrictive authorities are used to hire Federal employees, the less fair and open the system may be.

For a copy of the full report, please visit www.mspb.gov/studies

Veterans' Employment Redress Laws in the Federal Civil Service

Research Highlights

November 2014

The laws and policies to protect the rights of veterans in the Federal civil service are an important part of the merit systems. This report discusses in depth the two primary laws by which veterans, preference eligibles, and service members in the civil service can obtain redress for a violation of their employment rights: (1) the Veterans Employment Opportunities Act of 1998 (VEOA); and (2) the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

Selected Similarities

- MSPB lacks jurisdiction over certain Federal employers.
- Jurisdiction can be established through a non-frivolous assertion.
- A claim under these laws may be raised as an affirmative defense in an action that is otherwise appealable to MSPB.
- If a violation is found, the agency will be required to comply with the violated provisions and award compensation for any loss of wages or benefits suffered as a result of the violation.

Selected Differences

	VEOA	USERRA
Covered Actions	A Federal agency has denied an individual's right to veterans' preference or consideration for a vacancy under a law granting such consideration.	An agency has discriminated on the basis of military service or refused to allow the individual to return to his or her position following such service.
The Individual	The individual must be a veteran as described in 5 U.S.C. § 3304 (f)(1) or be a preference eligible.	The individual must be a person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service.
Filing with Department of Labor (DOL)	An individual must (in the absence of equitable tolling) file a complaint with DOL within 60 days after the date of the alleged violation.	An individual has the option to file a complaint with DOL but can seek redress from the Board without first filing a complaint with DOL.
Deadlines to File with MSPB	In the absence of equitable tolling, the appellant cannot file: (1) before the 61st day after the date on which the complaint is filed; or (2) later than 15 days after the date on which the complainant receives written notification from the Secretary that the matter is closed.	USERRA does not contain a deadline to file, but laches may apply.
Hearing	No right to a hearing.	Right to a hearing.

For a copy of the full report, please visit www.mspb.gov/studies

Veteran Hiring in the Civil Service:
Practices and Perceptions

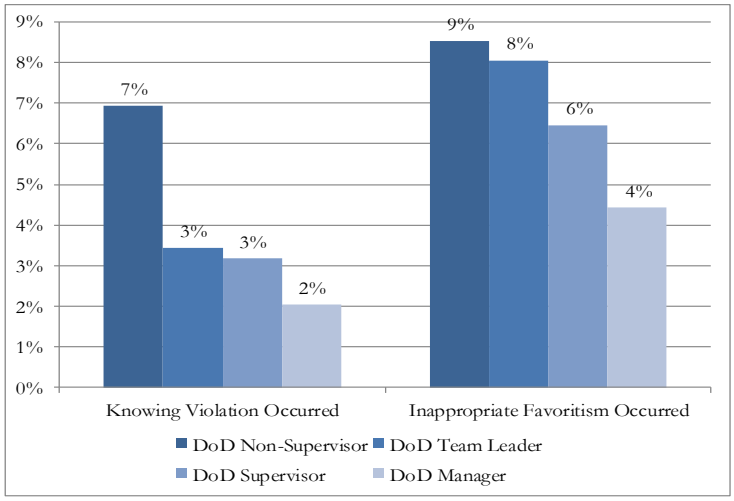
Research Highlights

August 2014

Dating to the Civil War, it has been the practice of the Federal Government to provide certain individuals with a preference in hiring based upon military service. However, the laws and regulations regarding the preferences in hiring that can or must be given to veterans and certain family members have become extremely complex. The preferences vary by the specific circumstances of the veterans (or family members) and the hiring authorities being used. These laws and regulations invite misunderstandings, confusion, perceptions of wrongdoing, and possibly actual wrongdoing—whether intentional or inadvertent. Survey data regarding Federal employee perceptions related to the hiring of veterans in the civil service is below.

Percent of agreement with statements from the U.S. Merit Systems Protection Board's (MSPB's) 2010 Government-wide survey regarding the treatment of veterans:

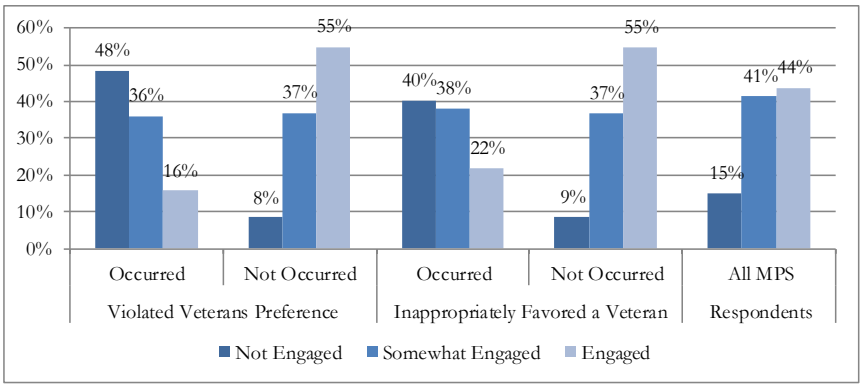
An official in my organization has...	Happened	I saw this	Total
...knowingly violated a lawful form of	1.4%	3.1%	4.5%
...inappropriately favored a veteran.	1.5%	5.0%	6.5%



Data from the 2010 survey show that, in the Department of Defense (DoD), perceptions of both favoritism towards veterans and violations of preference rights were higher than the Government-wide average, with 5.3% of DoD employees perceiving violations of preference rights and 8.0% perceiving inappropriate favoritism towards veterans.

However, as shown in the chart to the left, DoD supervisors and managers were twice as likely to perceive inappropriate favoritism towards veterans as they were to perceive a knowing violation of veterans' preference.

As shown in the chart to the right, according to the 2010 survey, employees who perceived violations of veterans' preference or inappropriate favoritism towards veterans were much less likely to be engaged.



It is important for agencies to address these perceptions to ensure that: (1) officials act appropriately; and (2) employees can feel more confident that their officials comply with the merit system principles and avoid prohibited personnel practices.

For a copy of the full report, please visit www.mspb.gov/studies

Sexual Orientation and the Federal Workplace: Policy and Perception

Research Highlights

May 2014

Gay and lesbian individuals were once deemed unsuitable for Federal employment. In 1975 this policy was changed, and Federal employment policies have continued to evolve since that time. In 1980 the Office of Personnel Management (OPM) interpreted the newly-enacted tenth Prohibited Personnel Practice (PPP), which prohibits discrimination based on conduct that does not adversely affect job performance, to also prohibit sexual orientation discrimination. This interpretation means that Federal employees (or applicants for Federal employment) who believe they have been discriminated against based on their sexual orientation can file a complaint with the Office of Special Counsel (OSC), which determines if such allegations warrant further inquiry.

Executive Order 13087 (1998) reaffirmed the policy of non-discrimination based on sexual orientation in Federal employment. It could not, however, establish any additional rights or remedies for individuals alleging sexual orientation discrimination, such as the ability to proceed before the Equal Employment Opportunity Commission (as employees may who allege discrimination on other bases)—that right can only be granted by Congressional action. As the prohibition against sexual orientation discrimination has never been expressly stated in statute nor affirmed in judicial decision, the view that the tenth PPP prohibits sexual orientation discrimination, although generally accepted, has been subject to alternate interpretation. For example, in 2004, the Special Counsel determined that the tenth PPP did not extend to sexual orientation discrimination.

There are encouraging signs that the history of sexual orientation discrimination in Federal employment is being overcome. For example, lesbian, gay, bisexual, and transgender (LGBT) employees appear to be represented in the supervisory, managerial, and executive ranks at the same proportion as they are in the overall Federal workforce. In addition, according to the Merit System Protection Board's (MSPB) Merit Principles Survey 2010, relatively few Federal employees believed that sexual orientation discrimination occurred in their work unit—a similar percentage as believe certain other PPPs occur (see table).

In the past two years, an official in my work unit has…	
Discriminated in favor or against someone in a personnel action based upon national origin	3.4%
Discriminated in favor or against someone in a personnel action based upon sexual orientation	3.2%
Knowingly violated a lawful form of veteran's preference or veteran's protection laws	3.1%
Discriminated in favor or against someone in a personnel action based upon marital status	2.5%

…but I was not personally affected by it

OPM has previously reported that, according to 2012 Federal Employee Viewpoint Survey (FEVS) results, LGBT Federal employee perceptions of the workplace are generally less positive than those of other employees. Further MSPB analysis of the FEVS data revealed that, in some agencies for at least some issues (including agency leadership, work environment, and training), LGBT employee perceptions were as positive about the workplace as those of their heterosexual colleagues. This suggests that agencies may be able to create more inclusive cultures, resulting in a more positive atmosphere in the workplace.

For the full report, including detailed recommendations, please visit www.mspb.gov/studies.

Research Highlights

Evaluating Job Applicants:
The Role of Training and Experience in Hiring

January 2014

Training and experience (T&E) assessments are part of the hiring process for almost every Federal job. These assessments must be valid (job-related and acceptably predictive of job performance) to comply with first merit system principle, which envisions hiring based solely on relative ability. Also, effective screening and evaluation of job applicants remains important even—indeed, especially—in a time of reduced Federal hiring, because hiring decisions have long-term effects on agency performance, productivity, and morale. This report describes several methods of T&E assessment, identifies strengths and weaknesses of these methods, and suggests remedies.

How—and how well—do T&E assessments work?

Training and experience assessments use information about the *past* to make inferences about an applicant's *present* proficiency and *future* job performance. As shown in the table, several T&E assessments are sufficiently valid to have practical value in hiring. However, the more valid training and experience assessments require an investment of effort and time from the employer—and, to a lesser degree, the job applicant—to work as intended. Although technology can make T&E assessments more efficient and consistent, there is still no "free lunch."

Practical Value of Selected Types of T&E Assessment

Practical Value	Assessment
Very Useful	• Structured Interview • Accomplishment Record
Likely Useful	• Occupational Questionnaire • Reference Checks
Possibly Useful	• Years of Experience • Resume (by itself)

Are there issues in using T&E assessments for Federal hiring?

Our research highlights continuing challenges in such assessment. For example—

- *Past* training and experience do not necessarily confer *present* competence;
- Applicants may fail to fully or adequately describe their job-related T&E;
- Applicants—even those who are honest and highly-qualified—are not good generally at evaluating their own training and experience; and
- Applicants have an incentive to exaggerate their T&E and ability—and some do.

What can be done to make T&E assessments more useful?

- Grounding the assessment in a current and thorough job analysis;
- Improving information collection (for example, by revising occupational questionnaires);
- Improving information evaluation (for example, by enhancing rating scales and scoring);
- Providing guidance to applicants to develop their self-rating abilities; and
- Verifying applicant information and proficiency.

What does MSPB recommend?

- Avoid use of low-validity T&E assessments for hiring decisions.
- When T&E assessments are used, use techniques to improve their accuracy.
- Consider alternatives when practical.

For the full report, including a discussion of when—and how—to use T&E assessments, please visit www.mspb.gov/studies.

Research Highlights

Preserving the Integrity of the Federal Merit Systems: Understanding and Addressing Perceptions of Favoritism

December 2013

The eighth merit system principle at 5 U.S.C. § 2301 (b)(8) requires that Federal agencies protect employees against personal favoritism. To comply with that principle, Federal supervisors must base personnel decisions on organizational needs and objective criteria, such as assessments of ability or performance, rather than personal preferences or relationships. Avoiding favoritism is also important to agency productivity: employees who perceive workplace favoritism are *less* likely to be engaged—to go the "extra mile" at work—and *more* likely to consider leaving than those who do not.

Work remains to be done. In a survey conducted for this study, 28 percent of Federal employees indicated that their supervisor engages in favoritism, and more than half said saying that other supervisors in their organization demonstrate favoritism. Likely contributors to these responses include:

1) Intentional favoritism, such as deliberately basing a decision on personal connections;
2) Unintentional favoritism, such as making a decision that is unconsciously influenced by bias or personal factors; and
3) Employee misperception of a merit-based decision, which might result from a lack of transparency or a misinterpretation of the role and influence of existing personal relationships.

Notably, many employees believe that advancement depends on factors that they consider problematic. As shown in the table, many employees believe that managers overvalue personal and professional relationships and undervalue factors such as experience, competence, and dedication.

Consistent with this pattern, Federal employees were more likely to attribute occurrences of favoritism to conscious intent (supervisors valuing friendship over competence, 59%) than to a lack of understanding of merit system requirements and rules (38%) or a lack of adequate tools for making merit-based personnel decisions (32%).

Federal Employee Views on Factors Considered in Promotion Decisions

Factor	Should Be Considered	Is Actually Considered
Quality of experience/ Technical competence	98%	58%
Recognized potential	93%	51%
Professional relationship with selecting official	14%	47%
Personal relationship with selecting official	2%	40%

Source: U.S. MSPB, 2011 Federal Merit Systems Survey

The report addresses all three contributors to perceptions of favoritism, outlining actions for those who make or guide personnel decisions (e.g., supervisors and HR professionals) and for those affected by them. For example, we recommend that:

- *Agency leaders* hold supervisors accountable for proper use of their authority, which includes making merit-based decisions and refraining from favoritism;
- *Supervisors* ask employees about their career goals and interests, so they can make more fully-informed and equitable decisions in areas such as work assignment and training;
- *Human resources staff* advise supervisors on how they can effectively and properly use HR authorities and flexibilities—while recognizing their responsibility to oppose an illegal or improper action; and
- *Employees* seek information on how personnel decisions are made, and request developmental feedback to help them prepare and compete for opportunities for advancement and recognition.

For the full report, including detailed survey results and recommendations, please visit www.mspb.gov/studies.

Research Highlights

December 2013

Clean Record Settlement Agreements and the Law

A clean record agreement (CRA) is a negotiated settlement agreement under which an agency is obligated to change, remove, or protect potentially negative information about an individual in exchange for resolution of that individual's employment-related claims against the agency.

Why Study CRAs?

A majority of the adverse action cases filed with the U.S. Merit Systems Protection Board for which MSPB finds it has jurisdiction are resolved by a negotiated settlement agreement (NSA).

Ninety-five percent of surveyed agency representatives reported that they had entered into an NSA in the preceding three years.

Eighty-nine percent of agency representatives who used NSAs were involved in one or more NSAs with a clean record provision.

Seventy-five percent of agency representatives who used CRAs agreed that CRAs "are often the only way to get an appellant/employee to agree to settle."

When an agency fails to meet its obligation to clean the record, or to support the cleaned record in communications with others, material breach may result. In the event of a material breach by the agency, the appellant will have the option of rescinding the agreement. This means the parties may find themselves litigating what they thought they had resolved years ago. Additionally, there may be the possibility of back pay with interest if a term of the agreement was that the individual would not return to his or her employment with the agency.

Lessons from Case Law:

The obligation to clean the record and to support that record in communications with others could be read broadly unless the CRA contains language that narrows an obligation and that narrowing language applies to the facts of the particular case.

An agency is responsible for the records and actions of those under its authority and control - including contractors - unless the agreement narrows that responsibility.

The ability of an agency to discuss an individual with other Government officials is very case specific. The outcome of litigation over an alleged breach of an agreement may depend on the language in the CRA, the extent to which the alleged offenses qualify as criminal in nature, the role of the official making an inquiry, and/or the specificity of any waiver forms.

A CRA between the agency and the individual cannot bind the behavior of those who are not a party to the CRA, such as the Office of Personnel Management, local law enforcement, etc.

Even if the parties agree not to disclose that the individual left employment by mutual agreement, the CRA cannot authorize an individual to withhold that information from others when asked, and a failure to disclose such information when asked by a Federal agency or its contractor may be grounds for removal and debarment from Federal employment.

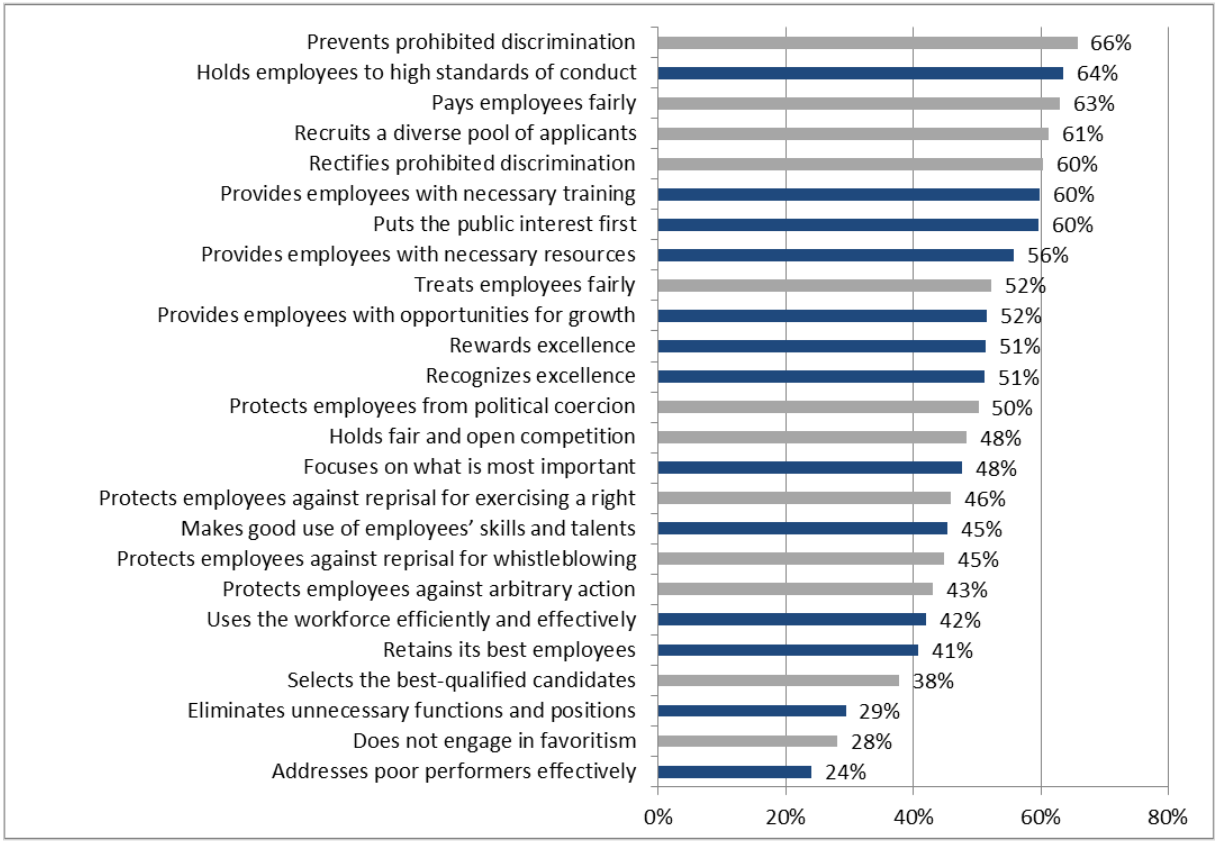
For the full report discussing in greater detail the CRAs and facts from specific cases please visit www.mspb.gov/studies.

Research Highlights

January 2013

Managing Public Employees in the Public Interest

The Merit System Principles are the nine basic standards governing the management of the executive branch workforce codified at 5 U.S.C. § 2301(b). In our 2010 Merit Principles Survey, we asked Federal employees if they agreed that their organization acted in accordance with various aspects of the merit principles. As shown below, agreement varied greatly across items. Stewardship issues (highlighted in blue) appear to pose particular challenges for agencies, although results also reflect employee concerns about some aspects of fairness (e.g., workplace favoritism) and protection, which are the subject of previous and ongoing MSPB research.



In the current fiscal environment, it is essential that Federal agencies: (1) use the workforce efficiently and effectively; (2) examine existing programs and commitments and, if needed, restructure functions and organizations to focus scarce staff and resources on what is most important; and (3) address poor performers effectively. Many Federal employees saw considerable room for improvement in these areas.

Employees also expressed reservations about their organization's ability to retain its best employees. Turnover can benefit the civil service and the public interest when it improves skills matches, affords employees greater opportunities to contribute, or gives employees and organizations new skills and perspectives. However, excessive turnover and the loss of good employees for reasons related to poor or indifferent workforce stewardship can harm morale, organizational performance, and the broader civil service.

For the full report, including detailed survey results, please visit www.mspb.gov/studies.

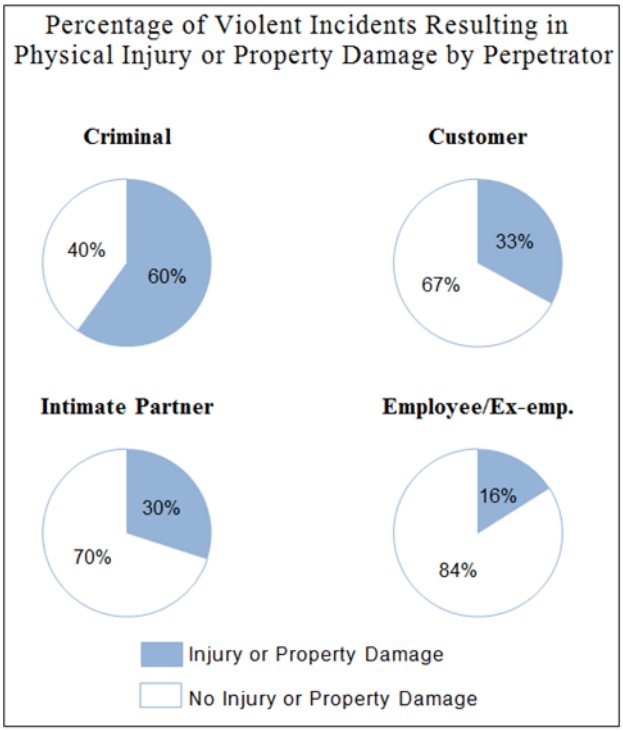
Research Highlights

September 2013

Employee Perceptions of Federal Workplace Violence

Workplace violence has effects that stretch far beyond individual victims. As discussed in our September 2012 report, workplace violence can spoil the work environment with negative consequences for an entire organization. Physical violence is clearly not acceptable in any workplace, but other violent behavior such as the threat of physical attack, harassment, intimidation, and bullying can also hurt organizations and their members.

Our 2010 Merit Principles Survey (MPS) asked Federal employees about their experiences with these physical and non-physical violent behaviors. Thirteen percent of respondents said that they had observed such behavior over the preceding two years. The vast majority of these observations (88%) were perpetrated by individuals who, for the most part, belonged in the workplace—current and former employees (54%) and customers (34%). Physical security measures that keep individuals who would do harm out of the Federal workplace are vitally important. However, these findings indicate that Federal agencies should also focus on strategies to reduce the incidence of violent behaviors by those who appropriately pass through those physical barriers.



Although current and former employees were the most frequent perpetrators of violence in the Federal workplace, they rarely exhibited physically violent behavior. Only 16% of the observations of violence perpetrated by current and former Federal employees resulted in either physical injury or damage to, or loss of, property (see chart). This means the observed violent behavior of current and former Federal employees typically involved threats, harassment, intimidation, or bullying.

Almost three-quarters of MPS 2010 respondents agreed that their agencies take sufficient steps to ensure their safety on the job. However, only about one-third of respondents who witnessed a violent act by a current or former Federal employee agreed likewise.

Among our recommendations to help reduce the number of violent incidents perpetrated by Federal employees are that Federal agencies: (1) foster organizational cultures that do not tolerate violent behaviors; (2) appropriately screen job applicants; (3) train employees on the warning signs of violent behavior and what to do if those signs are observed; (4) resolve serious conflicts in the workplace before they escalate into violent incidents; and (5) allow organizational factors such as geographic location, mission, occupational mix, and customer base to drive workplace violence prevention efforts.

For the full report, including a discussion of the incidence of workplace violence across different agencies and within varying occupations, please visit www.mspb.gov/studies.

Research Highlights

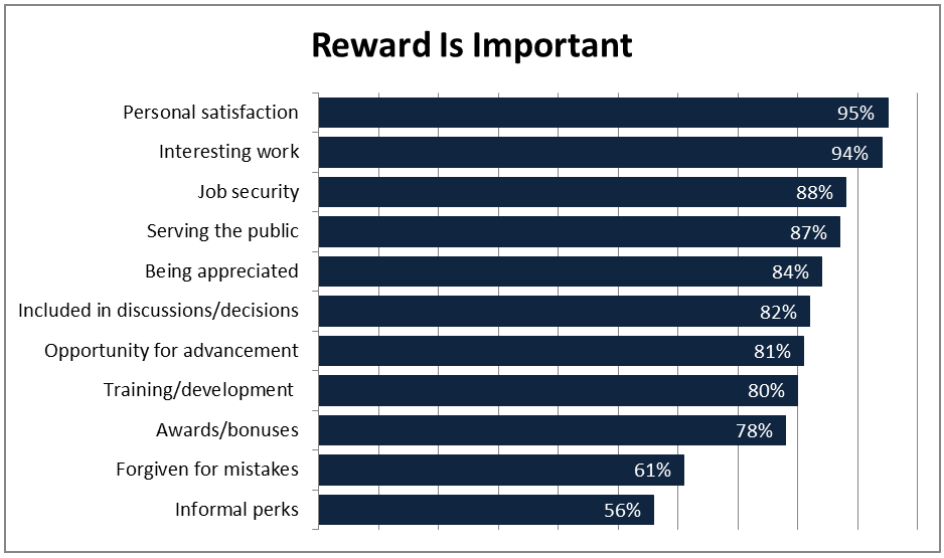
December 2012

Federal Employee Engagement: The Motivating Potential of Job Characteristics and Rewards

Motivation drives *what* employees do, *how* they do it, how *hard* they will try, and how *long* they will persist in a given endeavor. In our 2010 Merit Principles Survey, we asked Federal employees about the motivating aspects of their jobs and rewards.

Over 70 percent of respondents agreed that they felt highly motivated in their work. However, the extent to which their jobs had characteristics that were motivating varied greatly. Eighty-five percent of respondents said that their job had skill variety, 84 percent reported that their tasks were significant, 74 percent reported having autonomy in the performance of their duties, and 74 percent reported receiving feedback about their performance either from the work itself or from others. In contrast, only 58 percent reported that their work had "task identity"—the ability to complete a single piece of work from end to end. Task identity is important because a job that allows employees to complete entire tasks will generally be judged as more meaningful, and the resulting sense of ownership can increase motivation and engagement.

When asked which of 11 rewards were most important to them in terms of seeking out and continuing employment with their organization, the number one reward identified by Federal employees was the personal satisfaction they received (95% agreement). In contrast, awards and bonuses was ranked a distant ninth (78% agreement).



In an era of tight fiscal constraints, which can limit opportunities for advancement and reduce job security, it is especially important for agencies to communicate to employees that they are appreciated and that their work contributes to the public good. Agencies must also assure that available rewards, both monetary and nonmonetary, reinforce desired behaviors and performance. However, only 23 percent of respondents reported that they perceived a strong link between effort, job performance, and their receipt of a reward.

We recommend that Federal agencies and managers, to the greatest extent practical—(1) examine job characteristics and improve them when possible; (2) assign a variety of tasks; (3) structure tasks to maximize employees' ownership of the result; (4) provide timely feedback; (5) communicate to employees that their employees' work is valuable and their efforts are appreciated; and (6) provide rewards fairly and objectively.

For the full report, including an in-depth discussion of how job characteristics and rewards can contribute to employee motivation, please visit www.mspb.gov/studies.

Research Highlights

Blowing the Whistle:

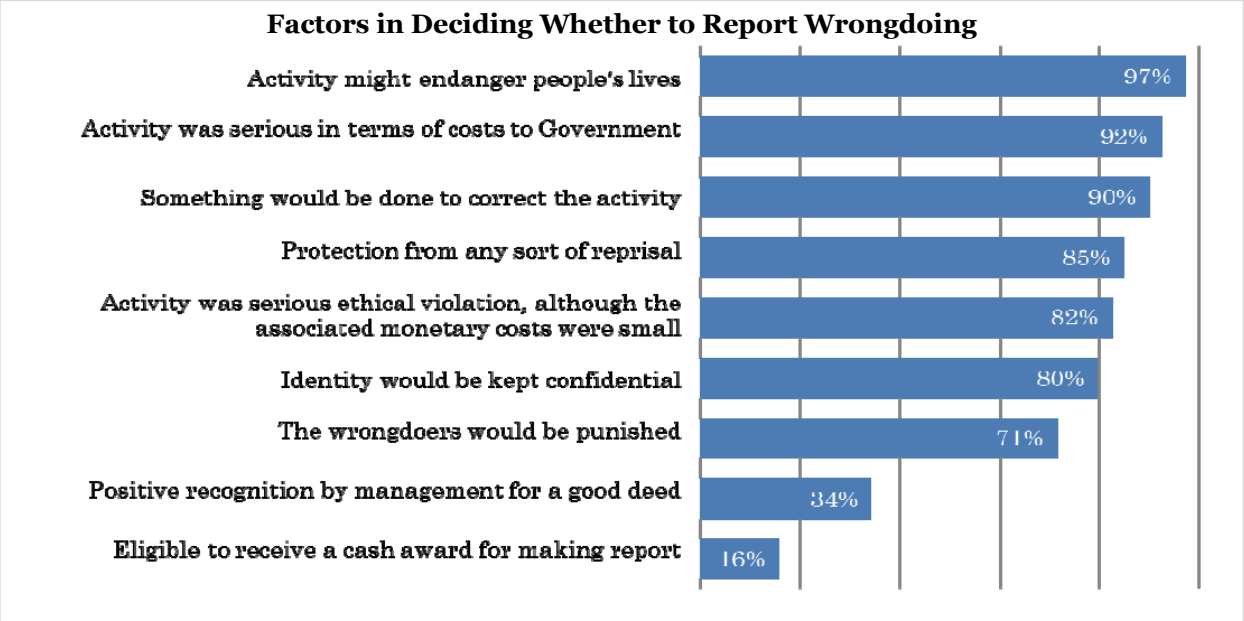
Barriers to Federal Employees Making Disclosures

November 2011

For nearly 35 years, civil service law has encouraged Federal employees to report violations of any law, rule, or regulation; gross mismanagement; a gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety.

This November 2011 report explores the extent to which Federal employees observe and report perceived wrongdoing in Federal agencies and the factors that influence an employee's decision to blow the whistle or remain silent.

In this study, MSPB compared responses from Governmentwide surveys in 1992 and 2010. Since 1992, the percentage of employees who perceived wrongdoing has decreased. Yet perceptions of retaliation against whistleblowers remain a serious concern, despite provisions of the No FEAR Act requiring that Federal agencies train employees on rights and remedies under whistleblower protection laws. In both 1992 and 2010, approximately one-third of employees who believed that they had been identified as the reporter of wrongdoing indicated that they had subsequently experienced or been threatened with reprisal. As shown below, the most important factors for Federal employees in deciding whether to report wrongdoing were not personal consequences, but rather the seriousness of the wrongdoing and the likelihood of the agency's acting positively on a report. Thus, agencies have the power to influence employees' decisions about reporting wrongdoing. The most important step that agencies can take to prevent wrongdoing may be to foster a culture that supports whistleblowing.



When asked whether their agency had educated them about the rights of whistleblowers, over 50 percent of the 2010 survey respondents agreed—but 21 percent gave a neutral response and 24 percent disagreed. The report discusses agencies' obligations under the No FEAR Act to train employees in this area and the importance of providing such training.

For the full report, including detailed survey results, please visit www.mspb.gov/studies.

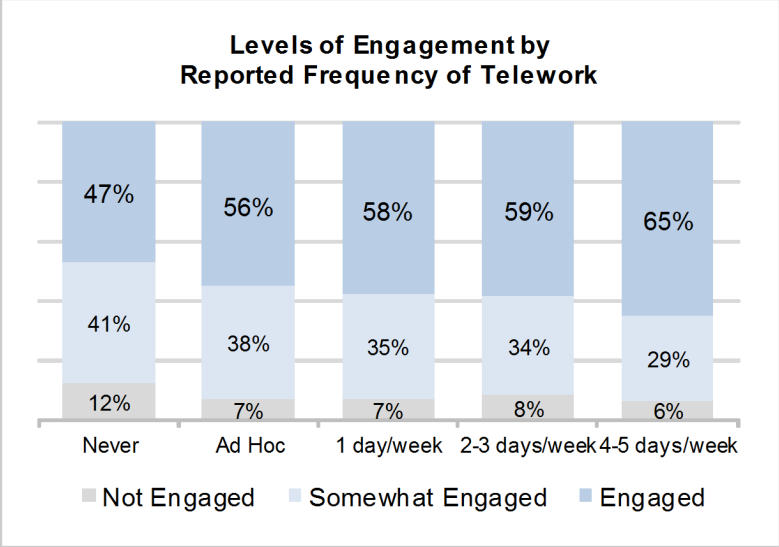
Research Highlights

Telework: Weighing the Information, Determining an Appropriate Approach

October 2011

The fifth merit system principle states that "The Federal work force should be used efficiently and effectively." Telework, which provides flexibility in where and when work is accomplished, is a tool that Federal organizations can use to support a high-performing workforce and further mission success. This October 2011 report discusses issues and considerations that organizations should weigh when deciding how to integrate telework into their business strategies and operations.

Telework has many potential benefits for organizations and employees alike. In addition to direct organizational benefits in areas such as continuity of operations, emergency preparedness, and office space, telework can yield direct employee benefits in the areas of work/life balance and commuting time and cost. It appears that the greatest benefit of telework is indirect: enhancing recruitment, retention, and employee engagement by supporting employee work/life balance. As illustrated in the chart, survey results point to an association between the practice of telework and employee engagement.



Further, our research indicates that the benefits of telework can be attained while maintaining productivity and performance, if telework is managed appropriately. That includes making thoughtful decisions about telework eligibility and identifying—and taking steps to mitigate—any concerns about telework.

To make effective use of telework, organizations must weigh benefits of telework in conjunction with any concerns, legal requirements, and implementation considerations. One such consideration is ensuring that supervisors have skills and support needed to manage performance in a telework environment. Good performance management skills are essential for supervisors to make wise decisions about the use of telework and ensure fair treatment of both teleworkers and nonteleworkers. Other keys to realizing the benefits of telework and mitigating concerns include—

- Fostering a culture that is conducive to telework. For example, leaders should emphasize results over physical presence (e.g., time in the office) when setting expectations and evaluating performance, and reinforce that emphasis by teleworking themselves;
- Establishing a well thought-out technology infrastructure that provides access to necessary business tools and maintains good communications, teamwork, and work unit dynamics;
- Being flexible, as the optimal approach to telework is likely to evolve over time and requires organizations to challenge assumptions and try new practices; and
- Continuously evaluating the effectiveness of telework.

For the full report, including a holistic discussion of telework benefits, concerns, and implementation considerations, please visit www.mspb.gov/studies.

Prohibited Personnel Practices: Employee Perceptions

Research Highlights

August 2011

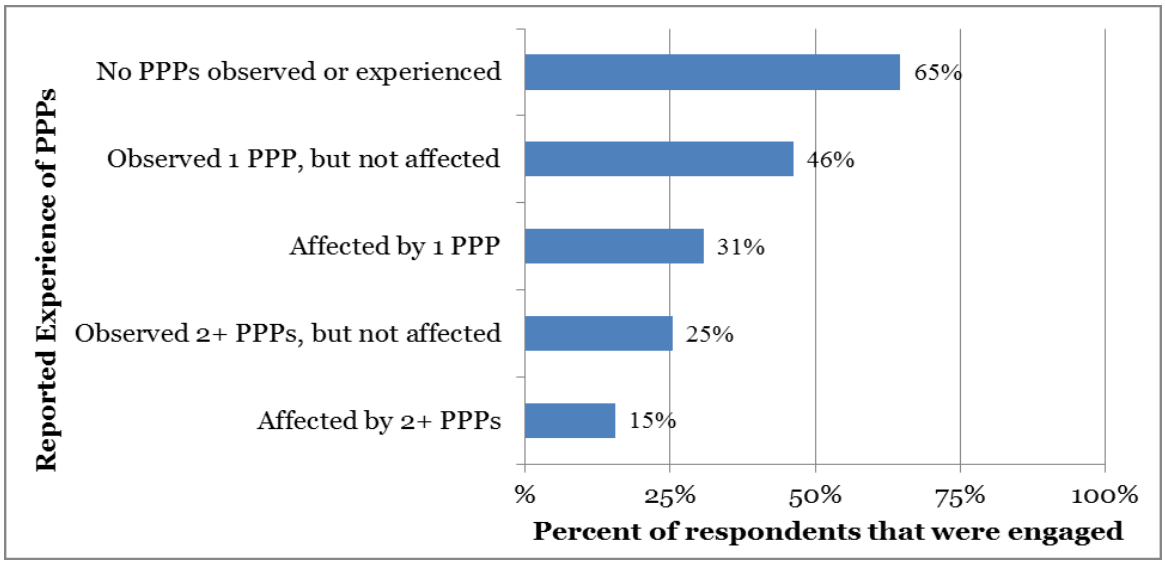
This August 2011 MSPB report describes the 12 prohibited personnel practices (PPPs) codified at 5 U.S.C. §2302(b), what each means, the frequency with which Federal employees perceive that PPPs occur, and the deleterious effect of actual or perceived PPPs on employees and the work environment.

What Are The PPPs?

The PPPs specify that agency officials may not—

- Discriminate;
- Consider improper recommendations;
- Coerce political activity;
- Obstruct a job competition;
- Grant an unauthorized preference;
- Engage in nepotism;
- Knowingly violate the preference rights of a veteran;
- Take an action that would violate a law, rule, or regulation that implements a merit system principle;
- Retaliate for whistleblowing or the exercise of certain rights; or
- Implement a non-disclosure policy unless the policy comports with the laws regarding whistleblower protection and disclosures to Congress or Inspectors General.

Data from a 2010 survey indicated that perceptions of occurrences of most PPPs were at an 18-year low. However, there was room for improvement. One important insight from this study is the extent to which employees observe how their coworkers are treated in the workplace—and how those observations affect attitudes and performance. As illustrated in the chart, an employee who believes that others have been subjected to a PPP is markedly less likely to be engaged, even when the employee was not personally affected. As many employees may observe a single management action or decision, even a low incidence of actual or perceived PPPs has real consequences for morale and organizational effectiveness.



For the full report, including detailed survey results, please visit www.mspb.gov/studies.

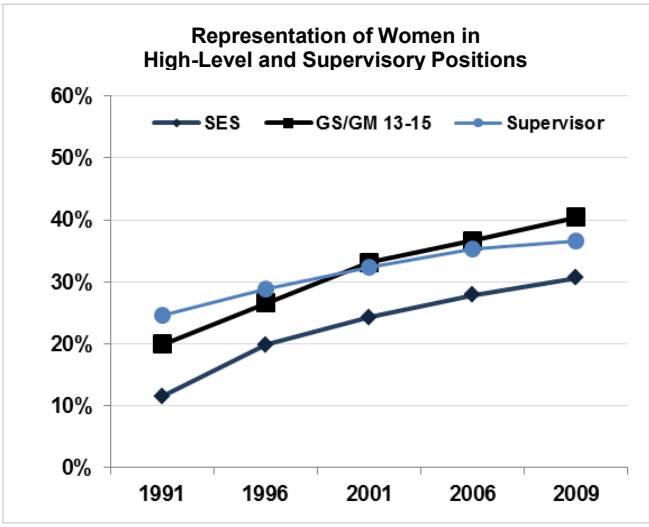
Research Highlights

May 2011

Women in the Federal Government: Ambitions and Achievements

The merit system principles at 5 U.S.C. §2301(b) call for a workforce that is "representative of all segments of society" and selection and advancement "determined solely on the basis of relative ability, knowledge, and skills." Drawing on surveys and statistical analysis, this May 2011 report examines the Federal Government's progress and challenges in the equitable treatment and advancement of women.

Has the Federal Government made progress?



Yes. Women have become better represented at higher grade levels and in supervisory and executive positions, reflecting increased employment of women in the professional and administrative occupations that afford the greatest opportunities for earnings and advancement. Accordingly, pay differences between women and men have been reduced, although not eliminated.

Also, women in the Federal Government have become more likely to believe that they are selected and evaluated on their merits. Compared to 1992, fewer women indicated that they had experienced discrimination on the basis of sex, and more women agreed with the statement that "Women and men are respected equally." MSPB analyses of promotion rates found that women are about as likely as men to be selected for advancement when factors such as occupation, education, length of service, and supervisory experience are held equal, suggesting that the harmful effects of overt bias and subtle stereotyping have indeed diminished.

What might the future hold, and what remains to be done?

In the Federal workforce, women and men report high and comparable levels of career commitment, and the educational attainment of women in general continues to rise. Nevertheless, women remain less likely than men to be employed in high-paying occupations, and sex-based discrimination and stereotypes have not disappeared. Actions that Federal agencies can take to address this situation include—

- Provide continuing feedback and development to employees to help them understand and meet requirements for advancement.
- Improve the recruitment, selection, and training of supervisors.
- Make informed use of both internal and external sources of talent.
- Avoid reliance on stereotypes and assumptions in day-to-day HR management; focus on ability and results.
- Remain vigilant against sex-based discrimination and ensure that avenues of redress are accessible and trusted.
- Maximize flexibility in work arrangements and job requirements.

For the full report, please visit www.mspb.gov/studies.

Making the Right Connections: Targeting the Best Competencies for Training

Research Highlights

February 2011

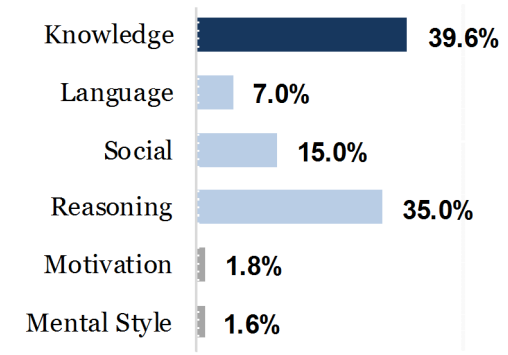
Federal employees need a variety of competencies to successfully perform their jobs and support their agencies' missions. Training is important in competency development. However, research and experience suggest that some competencies may be more difficult to develop than others. This February 2011 report contrasts employee perceptions of the trainability of job-relevant competencies with research findings about their actual trainability. The results should help Federal agencies and employees avoid training that targets less trainable competencies and is therefore less likely to succeed.

We asked Federal employees about their training needs and most recent training and assigned their responses to one of six competency categories, shown in the table. Survey data indicates that Federal employee beliefs and training activities are generally consistent with research findings. However, some employees may avoid training that would help them or seek training that might prove frustrating and unsuccessful because of misperceptions about the trainability of some competencies.

Competency Categories and Trainability	
• Knowledge	**Highly** Trainable
• Language • Social • Reasoning	**Moderately** Trainable
• Motivation • Mental Style	**Less** Trainable

Findings include—

- As illustrated, about 40% of employees sought training for highly trainable competencies; 57% for moderately trainable competencies; and 3% for less trainable competencies.
- Employees with formal career development plans are less likely to target less trainable competencies. Fewer than half of Federal employees have career development plans.
- Training pretests and screening can reduce frustration and waste that result when employees lack prior learning or ability.
- Training for less trainable competencies is sometimes imposed as a requirement by agencies or recommended by other employees. This can encourage attendance of training that is unlikely to improve its targeted competencies.



Source: 2010 Merit Principles Survey.

MSPB recommends that agencies: (1) increase employee career development planning; (2) consider trainability in review of employee training requests; and (3) increase use of pre-training preparedness testing, prerequisite requirements, and realistic previews of what training covers.

For the full report, including additional findings and recommendations, please visit www.mspb.gov/studies.

Research Highlights

July 2009

Managing for Engagement —
Communication, Connection, and Courage

Employee engagement refers to a heightened connection between an employee and the work, the organization, or the people they work for or with. In 2008, the U.S. Merit Systems Protection Board (MSPB) report *The Power of Federal Employee Engagement* discussed the strong effect of employment engagement on Federal agency performance. This 2009 report discusses what Federal leaders can do to increase engagement, drawing on MSPB's 2007 Merit Principles Survey and previous research. The report outlines six engagement drivers and recommends actions to promote the performance management behaviors and practices necessary to engagement.

Engagement Driver 1: Pride in Work and the Agency

This was an area of strength. Governmentwide, 91 percent of employees agreed that their work was important, and 74 percent of employees would recommend their agency as a place to work.

Engagement Driver 2: Effective Leadership

Here, results were mixed. Although 67 percent of employees agreed that their supervisor was doing a good job, views of senior leadership were markedly less positive. Notably, only 41 percent of nonsupervisory employees believed that they could express their opinions to higher management without fear of repercussions.

Engagement Driver 3: Opportunity to Perform Well

About two-thirds of employees believed their talents are used well in the workplace. However, many employees believed that meetings with supervisors to share information and discuss work issues were too infrequent, which can erode employee trust.

Engagement Driver 4: Positive Work Environment

Most employees reported a positive and collaborative work environment. For example, 81 percent of employees agreed that their supervisor treats them with respect. Yet many employees, particularly those in front-line positions, thought that leaders could make better use of employee insights to improve work processes and the work environment.

Engagement Driver 5: Appropriate Recognition

Only half of employees believed that recognition is linked to performance. That is a substantial improvement over MSPB survey results from the 1980s and 1990s—but also shows that many Federal agencies still do not adequately prepare supervisors to evaluate and recognize employee performance.

Engagement Driver 6: Prospect for Professional Growth

In this area, more investment is needed. Only 46 percent of employees indicated their training needs had been assessed, and only 55 percent were satisfied with the job training they had received.

Key Recommendations

For **employees**—
- Actively manage your performance.
- Seek continuous learning.
- Prepare carefully for performance discussions.

For **leaders** at all levels—
- Hire with care—and use the probationary period.
- Cultivate good working relationships with employees.
- Provide regular and constructive feedback.
- Be a model in requesting and acting on feedback.
- Provide **all** employees opportunities to grow.
- Hold **all** employees accountable for their performance.

For **agencies**—
- Make constructive use of employee surveys and input.
- Communicate openly and often to build trust.
- Use onboarding to engage new employees.
- Link recognition and rewards to performance.
- Select supervisors to manage performance—then hold them accountable.
- Give supervisors sufficient resources, training, and management support.

For the full report, please visit www.mspb.gov/studies.

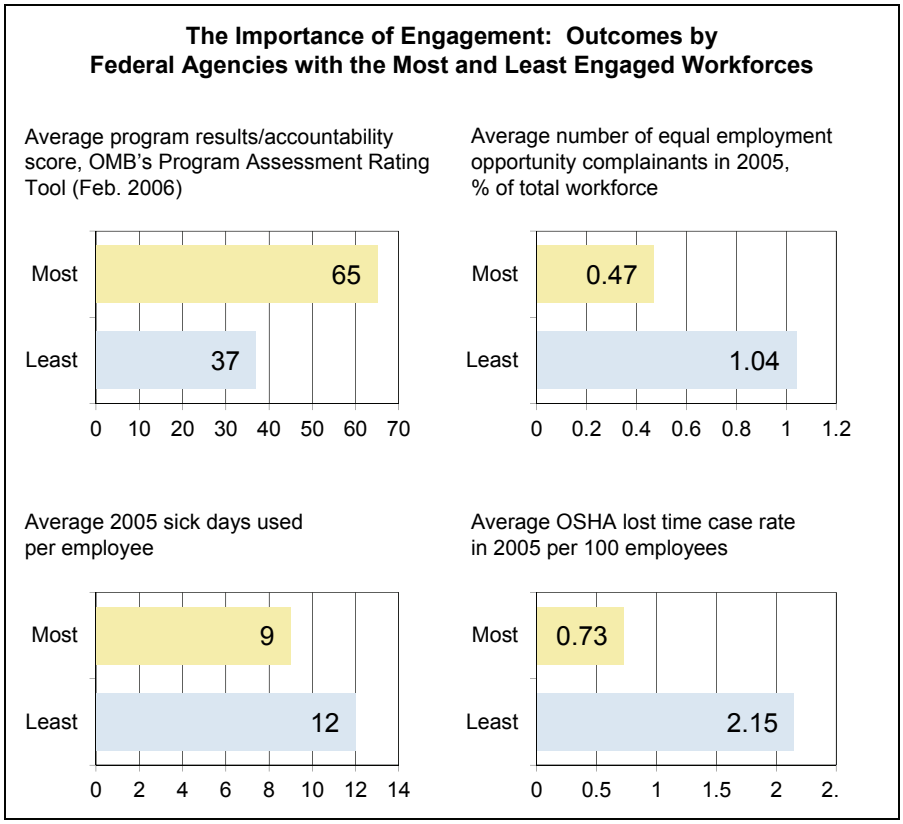
Research Highlights

The Power of Federal Employee Engagement

September 2008

In 2001, the Gallup organization found that business units with high employee engagement scores had better business outcomes than units with lower engagement scores. Similarly, in 2003, Towers Perrin found a clear relationship between increased engagement and improved retention of talent and financial performance. Based on results from the 2005 Merit Principles Survey, we found a similar relationship between higher levels of Federal employee engagement and desirable Federal agency outcomes.

We define employee engagement as a heightened connection between Federal employees and their work, their organization, or the people they work for or with. This connection appears to be stronger than job satisfaction—we found that of those Federal employees who were generally satisfied with their job, only about half were fully engaged in their work. Federal agencies with the most engaged employees experienced better outcomes than did agencies where fewer employees were engaged (see chart). Highly engaged agencies experienced: better programmatic results, less sick leave usage, fewer EEO complaints, and fewer cases of work-related injury or illness.



We found six themes that were important for engaging Federal employees: pride in one's work or workplace, strong organizational leadership, opportunity to perform well at work, appropriate recognition, prospect for future growth, and a positive work environment with some focus on teamwork. Among the recommendations we offer to agencies to improve the level of employee engagement within their workforces is to ensure a good person to job fit when filling vacant positions, recruit and select supervisors to supervise, and manage employee performance with the attention that it deserves.

Subsequent to the release of this report, two follow-up reports were also completed: *Managing for Engagement—Communication, Connection, and Courage* and *Federal Employee Engagement: The Motivating Potential of Job Characteristics and Rewards*.

Alternative Discipline:
Creative Solutions for Agencies to Effectively Address Employee Misconduct

Research Highlights

July 2008

Alternative discipline is an effort, undertaken by an employer, to address employee misconduct using a method other than traditional discipline. Traditional discipline most often takes the form of a reprimand (sometimes called an admonishment), suspension, change to lower grade, or removal, whereas alternative discipline allows more flexible options to address the problem.

What does an agency need to know?

- Policies, or at least guidance, on the use of alternative discipline can help ensure that human resources staff properly advise managers on the issues to consider when determining if alternative discipline is appropriate and, if so, what approaches should be considered.
- Mandating the use of alternative discipline without consideration of unique circumstances hinders the parties' flexibility to make the agreement match the situational needs.
- The more items that agencies insist are non-negotiable, the more supervisors are limited in their ability to reach fair and effective solutions.

What does a manager need to know?

- Each situation should be judged on its own merits. What works for one type of offense or one employee may not be as successful for a different offense or employee.
- Not every situation is appropriate for alternative discipline, and it should not be used if management has reason to believe traditional discipline is likely to be more effective.
- While traditional discipline is unilateral, alternative discipline that is the result of an agreement is a form of contract, meaning that contract law will be used to interpret it.
- Alternative discipline agreements should be drafted in consultation with legal advisors.
- A term of the agreement can be that the employee waives his or her appeal or grievance rights, but if the agreement is reached under the threat of the agency taking an adverse action, for the agreement to be valid, the agency has to believe in good faith that it could take the threatened action.

Elements of alternative discipline agreements to correct underlying problems and permit future traditional disciplinary actions if needed may include one or more of the following:

- Employee performs hours of community service equal to the amount of time that would have been spent on a suspension.
- Employee attends an appropriate program approved by the Employee Assistance Program (EAP).
- Employee serves the suspension on a weekend or other non-duty days to enable the agency to continue to use the employee's services and to prevent a financial impact on the employee.
- Employee serves a suspension in smaller pieces over the course of multiple pay periods to soften the financial impact.
- Employee serves a suspension that exists only on paper – no loss of duties or pay but the agreement states that the paper will be considered equivalent to a suspension of a particular length.
- Employee's suspension is recorded as LWOP so that there will be no permanent record of a disciplinary action.
- Employee's penalty is held in abeyance; if there is another incident in a specified time period, the penalty takes effect, but if there is not an incident during that period, the penalty will not take effect.

For a copy of the full report, please visit www.mspb.gov/studies

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