

A Primer in Pieces

By statute, in addition to its adjudication responsibilities, the U.S. Merit Systems Protection Board (MSPB) is responsible for conducting studies of the civil service “from time to time.” We are expected to use our expertise and judgment to determine what issues are suitable topics in light of our limited resources and the work already being done by others (*e.g.*, Government Accountability Office, academia, non-profit organizations). Every few years, when crafting a new research agenda, we ask stakeholders and the public what they would like to see us study. At the September 2014 Sunshine Act meeting for our last agenda, several speakers asked that we issue an explanation of how the adverse action process works. After considering that input, along with recent Congressional interest in the matter, and with what we felt we could contribute given our statutory responsibilities, the Board approved the inclusion of this project in our published research agenda.

However, once we began assembling the content, it became evident that a brief, single report might not be the best way to present that information. Simply stated, such a report could not be “brief.” There were too many different audiences who would have different uses for the information and presenting the information in a way that could be used by all resulted in the sort of lengthy document that often makes confusing topics even more confusing.

Instead, we decided upon a new approach. Frequently, an MSPB studies report tries to tell each reader an entire story. For this project, we decided to tell many different readers their piece of the story. For instance, a proposing official may find that he or she is more interested in an article describing decisions that proposing officials must make, than in articles about what might happen after the action leaves that official’s control. Conversely, a deciding official may want to focus on articles addressing his or her own responsibilities. Agency leaders, on the other hand, may find particularly helpful the sections that address agency culture, holding managers responsible, or ensuring actions do not result from the commission of prohibited personnel practices (PPPs) (as the statute assigns to leaders the responsibility for the prevention of PPPs). A member of Congress considering new legislation may be interested in articles covering which parts of the disciplinary process are based on constitutional law (and thus are hard to change), which parts of the process come from statute (and thus are most within the power of Congress), which parts of the process are regulatory (and thus are within the power of the Office of Personnel Management), and which parts of the process have been added by agencies (and thus are more likely to respond to agency action than to new legislation). Employees may be especially interested in articles discussing their rights and how to exercise those rights. Finally, academicians, the media, unions, and others each may find different articles more interesting or relevant based on their particular interests.

So, instead of a single, comprehensive report, we have drafted a series of articles. Think of it as an all-you-can-eat buffet that is always open and always free. You can come back to the server any time you like, select which dishes you are in the mood to ingest, and leave as much or as little on the plate as you like. This format will allow you to: (1) print out your own copies to mark up and take notes; (2) bookmark parts you will want to read again; (3) e-mail weblinks to others you think might be interested; (4) send an article to your human resources (HR) advisor with questions or comments connected to a situation you are facing; and (5) focus on specific education modules appropriate for your workforce. The material is designed to be bite-sized and suitable for different tastes, and MSPB encourages you to add your own

seasonings afterward. Read one article, a group of articles, or read them all. Simply put, please use this material in the manner most helpful to you.

Of course, as a quasi-judicial Federal agency, we are compelled to add a bit of fine print. This report addresses the system for the competitive and excepted services. The Senior Executive Service (SES) follows a slightly different process. (For more on the SES system, see our 2015 report, [*What is Due Process in Federal Civil Service Employment*](#)). Additionally, under 5 U.S.C. § 1204(h), we are prohibited from issuing advisory opinions. This means we can tell you, the reader, things that MSPB or a court have already decided, but cannot tell you what we or the courts might do with a set of facts that have not yet been presented for adjudication. These articles are product of MSPB's studies function, they are not adjudication decisions to be directly cited. If a section is relevant to a matter you are facing, please look at the cases and statutes being cited and work directly from those sources. Additionally, these articles are not a substitute for legal advice or advice from your HR staff, but they can help inform those conversations.