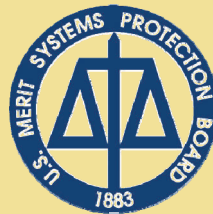


The Merit System Principles

Keys to Managing the Federal Workforce



U.S. Merit Systems Protection Board

January 2017

Introduction

Welcome to the Federal civil service! As an agency leader, you hold an important and visible position with great responsibility to yourself, your agency, the Federal Government, and the American people. Whether you are new to the Federal Government or simply moving into a new position, you will make important decisions about leading Federal employees every day.

MSPB has prepared this guide to help you understand the values and requirements of Federal merit systems so you can successfully navigate those responsibilities. Our goal is not to answer all of your questions, but rather to help you identify issues and recognize situations when you should seek advice from experts, such as your agency's human resources (HR) staff, on matters such as hiring, pay, recognition, managing performance, training, and retention.

Although this booklet cannot prepare you for every challenge that you will face, it discusses keys to managing Federal employees fairly and effectively and identifies resources that can help you implement the Merit System Principles (MSPs) and avoid Prohibited Personnel Practices (PPPs).

Contents

This guide provides:

1. Highlights from the history of the Federal civil service;
2. A set of questions and answers about the MSPs;
3. An overview of each MSP; and
4. References for additional information.

In Closing

The MSPs allow agency leaders substantial discretion—but they also mandate accountability for exercising that discretion wisely. By accepting a leadership position in the Federal civil service, you have committed to abide by the MSPs and to avoid and prevent PPPs.

Thank you for taking the time to read this guide to the MSPs.

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The mission of the U.S. Merit Systems Protection Board (MSPB) is to protect the Merit System Principles and promote an effective Federal workforce free of Prohibited Personnel Practices.



A Brief History of the Federal Civil Service

Federal employment originated in a “spoils system” in which hiring and firing of Federal Government workers was based on political loyalties. Over time, dissatisfaction increased with the inefficiency of Federal employment based on political patronage, which valued connections over competence and produced staffing upheavals with each change in Administration. Ultimately, the assassination of President Garfield by a disgruntled job seeker persuaded Congress that change was necessary.

The Pendleton Act of 1883 ended the practice of awarding Federal jobs on the basis of political affiliation or personal relationships and shifted Federal employment criteria to merit for the vast majority of Federal positions. However, the Pendleton Act did not address terminations. Therefore, it did nothing to ensure that removals were purely due to poor performance or misconduct or to protect Federal employees from removal for disclosing wrongdoing within their agencies. To address this need, in 1912, Congress enacted the Lloyd-LaFollette Act, which stated that removal actions must be for merit-based reasons and not inappropriate causes, such as whistleblowing.

By the late 1970’s, concerns were increasing that fairness within the merit system was being undermined and that personnel rules intended to preserve merit had become so numerous and complex that they impeded agency ability to effectively manage employees and remove poor performers. Therefore, Congress pursued reforms that would both enhance managers’ ability to wisely manage while preserving the principles of merit and fairness and the legal and Constitutional rights of Federal employees and applicants.

The result was the Civil Service Reform Act (CSRA) of 1978 and related Reorganization Plans, which accomplished several goals.

- To clarify expectations for the management of the Federal workforce, the CSRA established in law the MSPs and the PPPs, reinforcing or building on previous legislation.
- To balance system flexibility with system integrity, and to protect MSPs and prevent PPPs, the CSRA divided civil service responsibilities among several agencies, including the U.S. Merit Systems Protection Board (which initially included the U.S. Office of Special Counsel) and the U.S. Office of Personnel Management.
- To promote efficiency and effectiveness, CSRA provided that personnel authority would be exercised by individual agencies. Therefore, the primary responsibility for avoiding PPPs—and attaining the ideals of the MSPs—lies with employing agencies and their leaders.



What are the MSPs and the PPPs?

The Merit System Principles (MSPs) are nine basic standards that govern the management of the executive branch workforce and serve as the foundation of the Federal civil service. The Prohibited Personnel Practices (PPPs) are thirteen actions that are forbidden for employees who have the authority to make personnel decisions. Together, the MSPs and PPPs establish how the Federal workforce should be managed.

What are the general themes of the MSPs and PPPs?

- Fairness – treating employees fairly in all aspects of their employment.
- Protection – refraining from misuse of authority and protecting employees from harm, such as reprisal for the exercise of a legally protected right.
- Stewardship – managing employees in the short-term and long-term public interest.

Who is responsible for upholding the MSPs and avoiding PPPs?

All Federal employees are responsible. However, some employees have special responsibility:

- Agency leaders, as decision-makers and role models for the values distilled in the MSPs and PPPs;
- Supervisors, managers, and executives, as the officials who make decisions directly affecting the hiring, working conditions, utilization, and retention of Federal employees; and
- Human resources (HR) staff, as advisors on personnel authorities and how to exercise them.

What are the potential consequences of not supporting the MSPs?

MSPB research shows that actual or perceived failure to abide by the MSPs can lead to—

- Decreased individual and organizational performance;
- Increased Equal Employment Opportunity (EEO) complaints; and
- Increased intention to leave the agency.

When Federal laws are violated, agencies may be subject to investigation, litigation, and enforcement, which can result in corrective action and payment of compensatory or punitive damages. Also, any employee responsible for the violation of an MSP or the commission of a PPP may be subject to loss of authority, discipline or removal, and fines.



MSP 1: Recruitment, Selection, and Advancement

“Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.”

Purpose of MSP 1

- Focuses on attaining a well-qualified and representative workforce through open recruitment and fair, job-related assessment of applicants.
- Builds upon the Pendleton Act of 1883 which requires hiring and promotion based on qualifications such as knowledge, skills, and ability—not political or personal connections.
- Affirms the importance of basing decisions on merit and avoiding discrimination on the bases of race, color, religion, sex, and national origin (echoing Title VII of the Civil Rights Act of 1964 and related laws).

Actions to Take

- Identify talent needs through job and workforce analyses
- Actively seek diverse groups of prospective applicants through knowledgeable recruiters
- Announce vacancies through a variety of media
- Use an appropriate mix of hiring authorities
- Clearly describe the qualifications required to perform the job
- Establish job-related and measurable selection criteria
- Use assessments that are structured, valid and reliable
- Identify and address barriers to open competition and equal opportunity

Actions to Avoid

- Automatically hiring to refill vacancies without conducting an analysis of needed competencies
- Only posting vacancy announcements on USAJobs
- Relying exclusively or excessively on one or very few hiring authorities
- Restricting competition through narrowly-focused recruitment or unreasonable application procedures



MSP 2: Equity

“All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.”

Purpose of MSP 2

- Mandates fair treatment and nondiscrimination throughout the full range of employment decisions, such as recruitment and hiring, training and development, performance management, cash awards, pay increases, and retention and removal.
- Affirms that employees and applicants for employment are entitled to protections of the U.S. Constitution and the Privacy Act. For example, Federal employees maintain freedom of speech rights under the First Amendment, although they must respect some limitations, such as Hatch Act prohibitions against political campaigning (as covered in MSP 8 and PPP 3).

Actions to Take

- Select supervisors with strong skills in managing people and sufficient technical competence
- Train supervisors and hold them accountable for their workforce management decisions
- Treat employees fairly in all aspects of their work life
- Require merit-based decisions
- Exercise transparency to the greatest extent practical
- Analyze data to assess representation and employee perceptions, such as EEOC MD-715 reports, survey results, and trends in complaint filing and resolution

Actions to Avoid

- Selecting supervisors based on personal connections or technical competence rather than supervisory ability
- Basing personnel decisions on factors other than merit
- Overlooking or disregarding data that provides insight into the workforce



MSP 3: Compensation

“Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.”

Purpose of MSP 3

- Affirms a commitment to equity in both pay and performance recognition, to promote fairness and recruitment and retention of a diverse and competent workforce.
- Envisions pay that is both competitive and commensurate with non-Federal employers.
- Requires agencies to formally define, identify, and recognize “excellence in performance.”

A Closer Look: Common Pay Practices and Flexibilities in Federal Merit Systems

- *Pay grades and salary ranges based on systematic evaluation of a position’s duties, responsibilities, and qualification requirements, consistent with the Classification Act of 1949.*
- *Methods to maintain acceptably competitive salaries, such as locality pay, special salary rates, recruitment bonuses, and retention allowances.*
- *Performance appraisal systems, such as those under 5 U.S.C. 4302, that require agencies to establish standards, define levels of performance, and periodically rate employee performance.*
- *Options for recognizing high performance, such as pay increases, one-time cash awards, time off, and nonmonetary recognition.*

Actions to Take

- Ensure that positions are accurately described and properly classified
- Discuss factors that determine salary with HR staff
- Use the performance management process to monitor and document performance
- Plan and budget for employee recognition and provide recognition when deserved

Actions to Avoid

- Basing pay and award decisions on factors other than merit
- Allowing pay increases or awards to become automatic
- Failing to recognize excellent performance



MSP 4: Conduct

“All employees should maintain high standards of integrity, conduct, and concern for the public interest.”

Purpose of MSP 4

- Sets the expectation that Federal employees demonstrate exemplary integrity and conduct to maintain the public’s trust and honor their obligations to serve the public.

A Closer Look: Setting and Enforcing Standards of Conduct

- *The Principles of Ethical Conduct (5 C.F.R. Part 2635.101) describe standards of conduct that apply to all Federal employees. For example, the first principle states that “Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.”*
- *Federal agencies may develop supplemental standards of conduct tailored to their individual requirements. Agency practices for addressing misconduct are governed by civil service law and regulation (e.g., 5 U.S.C. § 7513(b)(1) and 5 C.F.R. § 752.604(d)) or agency-specific provisions.*

Actions to Take

- Hire employees with integrity
- Conduct careful assessments, such as reference checks—but consider only job-related information (as stated in PPP 2)
- Be mindful of challenges to uncovering integrity issues (such as a lack of transparency and “clean record” agreements)
- Appropriately utilize the probationary period
- Act swiftly to address risks and problems
- Encourage employees to report wrongdoing that they observe (also in MSP 9)

Actions to Avoid

- Making hiring decisions with insufficient information
- Avoiding or postponing action on potential integrity problems
- Ignoring or punishing those who report wrongdoing



MSP 5: Utilization

“The Federal work force should be used efficiently and effectively.”

Purpose of MSP 5

- Requires a balance between operational needs and obligations to employees.
- Sets a standard for day-to-day management of the workforce, beyond the specific HR policies and practices addressed by other MSPs.
- Necessitates supervisors who support and implement all of the MSPs, to attain a high-performing Federal workforce that serves the public interest.

A Closer Look: “Efficient and Effective” and “Fair”

An agency-level perspective on the efficient and effective utilization of the workforce includes having the appropriate level of staffing and managing the workforce within allocated funding levels.

However, efficiency and effectiveness are not just about the number or cost of employees. Long-term efficiency and effectiveness are undermined if agency leaders focus too narrowly on fiscal matters or short-term results at the expense of people. Inattention to fair treatment harms not only current and prospective employees, but also organizational outcomes and the public the organization serves.

Actions to Take

- Recognize the critical role of supervisors
- Select and train supervisors who are willing and able to implement all the MSPs
- Conduct succession planning to prepare a diverse candidate pool for future leadership roles
- Weigh the positive and negative outcomes of various strategies to manage staffing levels
- Use staffing strategies geared to anticipated changes in the level or nature of work
- Understand the importance of employee engagement to organizational outcomes

Actions to Avoid

- Selecting supervisors based on personal connections or technical skills
- Considering only organizational needs or only employee needs



MSP 6: Retention

“Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.”

Purpose of MSP 6

- Directs agencies to identify and address poor performance.
- Authorizes action, including removal, while emphasizing correction over punishment.

A Closer Look: Addressing Poor Performance in the Civil Service

Title 5 of United States Code, the civil service law covering most Federal employees, has two chapters (Chapter 43 and Chapter 75) that authorize removal or demotion for unacceptable performance. Both chapters require similar steps, but their standards of evidence and procedures differ.

- *Chapter 43 requires the agency to meet the standard of “substantial” evidence, while Chapter 75 imposes a higher standard of “preponderant” evidence.*
- *Chapter 43 requires the agency to provide the employee an opportunity to demonstrate acceptable performance, which is not required under Chapter 75. However, an action taken under Chapter 43 cannot be mitigated (reduced) by MSPB, while a penalty under Chapter 75, such as removal, can.*

In accord with the Constitutional due process requirements under the Fifth Amendment, Title 5 provides procedural rights and the right to appeal the action to a neutral third party—MSPB. This ensures that employees will receive a fair hearing and promotes confidence in the integrity of the process and outcome.

In summary, a Federal employee can indeed be removed for poor performance—but the agency must follow procedures and present evidence to ensure that the removal has a legitimate basis and motive.

Actions to Take

- Communicate performance requirements clearly, review progress regularly, and provide constructive feedback and coaching
- Evaluate options for remedying poor performance—and act
- Understand and observe due process requirements, to treat employees fairly and ensure that any adverse action taken can be defended

Actions to Avoid

- Avoiding or postponing appropriate action to address poor performance



MSP 7: Employee Training and Development

“Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.”

Purpose of MSP 7

- Directs agencies to invest time and money into training and development opportunities to promote employee performance and retention.
- Establishes the dual goals of improving individual and organizational performance.

A Closer Look: Employee Education and Training as an Investment

Agencies should make and honor a commitment to employee development even during stringent budgets, because an investment in employees can—

- *Provide an excellent return on investment in improved individual and organizational performance;*
- *Help employees gain the skills needed to adapt and excel as their work environments and responsibilities become increasingly complex; and*
- *Aid employee motivation and retention by making employees feel valued and providing an opportunity to enhance knowledge and abilities.*

Actions to Take

- Provide resources and opportunities for employees to improve their performance
- Prioritize training by identifying critical competencies for individual employees, the work team, and the organization in the short and long term
- Discuss with employees their interests in training and developmental opportunities
- Consider the relative value in selecting for vs. training for competencies, recognizing that some competencies are more trainable than others
- Create an organizational culture that supports ongoing learning
- Ensure supervisors, managers and executives receive appropriate training

Actions to Avoid

- Funding training that lacks a clear link to individual and organizational development
- Reducing training as a cost-cutting measure (trading short-term gain for long-term pain)



MSP 8: Neutrality

“Employees should be—

(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.”

Purpose of MSP 8

- States that Federal employees cannot be treated arbitrarily, in contrast to an “at-will” system that permits termination without cause.
- Prevents personnel actions for reasons that are contrary to the public interest, such as firing a career employee to create a vacancy for a personal friend or political ally.
- Bars Federal employees from using their authority or office to influence nominations and elections, to promote and preserve a politically neutral career civil service.

A Closer Look: The Hatch Act

The prohibition of Subsection B of MSP 8 is enforced primarily through the 1939 Act to Prevent Pernicious Political Activity, as amended, which is more commonly known as the “Hatch Act.” The Hatch Act, which is enforced by the U.S. Office of Special Counsel, limits the political activities of Federal employees to protect them from political coercion and to prevent the politicization of the career civil service.

Actions to Take

- Demonstrate zero tolerance for partisan political coercion and discrimination
- Base personnel decisions on organizational needs and job requirements rather than personal preferences
- Carefully select and train supervisors and hold them accountable
- Practice transparency
- Seek and utilize the expertise of HR staff

Actions to Avoid

- Making decisions based on personal or political relationships rather than merit
- Using one’s position or authority to try to influence the outcome of an election



MSP 9: Public Interest

“Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—

(A) a violation of any law, rule, or regulation, or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.”

Purpose of MSP 9

- Establishes that Federal employees should be protected against reprisal when they disclose wrongful conduct.

A Closer Look: What is Whistleblowing?

Whistleblowing occurs when an employee has a reasonable belief of and makes a specific and detailed allegation of wrongdoing, such as a violation of law, rule or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a “substantial and specific danger” to public health or safety.

Federal employees who blow the whistle serve both the Federal Government and the public interest by reporting wrongdoing that involves breaking laws, wasting money or endangering the well-being of others. Fear of reprisal has a chilling effect on employees’ willingness and ability to report wrongdoing and voice concerns.

Congress passed the Whistleblower Protection Act of 1989 (WPA) and the Whistleblower Protection Enhancement Act of 2012 (WPEA) to expand the circumstances under which a disclosure would constitute a protected activity. Additionally, the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) requires agencies to notify employees annually about their rights under the antidiscrimination and whistleblower laws and to provide training every two years.

Actions to Take

- Protect employees against reprisal for whistleblowing
- Demonstrate zero tolerance for retaliation
- Carefully select and train supervisors and hold them accountable
- Practice transparency
- Seek and utilize the expertise of HR staff

Actions to Avoid

- Penalizing employees for exercising their rights
- Responding to problems in a way that discourages employees from voicing concerns



What More Can You Do to Support the MSPs?

Actions

- Learn more about the MSPs, PPPs and related laws.
- Ensure that employees (including HR staff) receive adequate training to fully understand the Merit System Principles and their requirements.
- Require that new supervisors are trained on the MSPs and PPPs as soon as they are selected.
- Institute refresher training for supervisors and managers on a regular basis (at least every three years) to reinforce expectations for merit-based decisions and address any changes in laws, regulations, or policies.
- Consult with HR staff or others with relevant expertise to identify and evaluate options to achieve the desired merit-based goals.
- Do not establish practices or request actions that violate MSPs or result in PPPs.
- Select subordinates who are committed to upholding the MSPs.
- Hold supervisors, managers and executives accountable for adhering to the MSPs and avoiding PPPs.
- Educate employees regarding their rights and responsibilities and ensure that they are aware of procedures for redress.

Additional Resources

- www.mspb.gov/studies - Includes over 100 MSPB reports, such as *The Merit System Principles: Guiding the Fair and Equitable Management of the Federal Workforce*; the *Issues of Merit* newsletter; and other resources.
- www.osc.gov – Provides an overview of the PPPs, copies of Congressional reports and testimonies, and other relevant information.
- www.eeoc.gov – Features information on the Federal EEO complaint process, relevant reports, and information on Federal discrimination laws.
- www.opm.gov – Provides information on HR policies for the Federal Government.
- www.hru.gov – Offers a course catalog and access to free webinars for Federal employees, including some specifically for supervisors and managers.



The Merit System Principles

Adapted from Title 5, United States Code, Section 2301(b).

1	Recruit a diverse pool of applicants. Hold fair and open competition. Select the best-qualified applicants.
2	Treat employees and applicants fairly and equitably. Respect employees' privacy and constitutional rights.
3	Pay employees fairly. Recognize and reward performance.
4	Hold employees to high standards. Put the public interest first.
5	Use the workforce efficiently and effectively.
6	Retain employees based on performance. Effectively address poor performance.
7	Provide employees with training and development.
8	Protect employees against arbitrary action, favoritism, and political coercion.
9	Protect employees against reprisal for whistleblowing or exercising a right.

The MSPB report *The Merit System Principles: Guiding the Fair and Effective Management of the Federal Workforce* (September 2016), available at www.mspb.gov/studies/browsestudies.htm, provides the full text of each MSP with an explanation of its intent, a discussion of Federal employee perceptions of adherence to the principle, related MSPB research findings and recommendations, and a brief discussion of illustrative MSPB cases.



The Prohibited Personnel Practices

Adapted from Title 5, United States Code, Section 2302(b).

An employee who may take, influence, or recommend a personnel action may not—

1	Discriminate on any protected basis, such as race, color, religion, sex, national origin, age, disability, marital status, or political affiliation.
2	Consider any reference or recommendation that is not directly related to the job to be performed.
3	Coerce political activity or base a personnel action on political activity or inactivity.
4	Obstruct any person's right to compete for employment.
5	Influence any person to withdraw from competition.
6	Grant any unauthorized preference to an employee or applicant.
7	Provide an advantage to a relative.
8	Take or influence a personnel action in reprisal for whistleblowing.
9	Take or influence a personnel action in reprisal for exercise of a right of complaint or appeal.
10	Discriminate on the basis of conduct that is not job-related.
11	Take or influence a personnel action that violates any veterans' preference requirement.
12	Take or influence a personnel action that violates any merit system principle.
13	Implement or enforce any improper nondisclosure policy or agreement.

Information on the PPPs and their enforcement is available on the website of the Office of Special Counsel, www.osc.gov.

