

# ISSUES OF MERIT

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## Sexual Harassment and Formal EEO Complaints

*A look at why Federal employees exposed to sexual harassment may not file formal EEO complaints.*

When Federal employees feel they have been subjected to sexual harassment, there are a number of actions they can take to respond. As discussed in MSPB's new report, *Sexual Harassment in Federal Workplaces: Understanding and Addressing the Problem*, responses to MSPB's 2016 Merit Principles Survey (MPS) found that only 11 percent of Federal employees who experienced one or more sexual harassment behaviors responded by filing a formal equal employment opportunity (EEO) complaint. There are several possible reasons for this that deserve further consideration to ensure that any incidents of sexual harassment will be promptly and appropriately addressed.

**Fear of retaliation.** In response to the MPS, only one-third of women and one-third of men who filed an EEO complaint related to sexual harassment said that it improved the situation, and 31 percent of the women and 40 percent of the men said that it worsened the situation. This gap between women and men may be partly due to misconceptions around who may be targeted by sexual harassment and how they should respond.<sup>1</sup> Further, while retaliating against an employee for filing an EEO complaint or grievance is illegal, this prohibition does not always prevent it from occurring. Employees may also fear negative reactions from coworkers.

**Concerns regarding the EEO complaint process.** Although the majority (81 percent) of Federal employees indicated that they were familiar with formal complaint channels, only 60 percent were confident that a charge of sexual harassment would be resolved fairly and justly. Further, as noted in the Equal Employment Opportunity Commission's (EEOC) *Annual Report on the Federal Workforce for Fiscal Year 2019*, the Governmentwide average length of time from filing a formal complaint to selected milestones were:

- Filing to completed investigation: 227 days;
- Filing to closure: 587 days;
- Filing to final orders fully implementing decisions by an EEOC Administrative Judge: 1,000 days.

<sup>1</sup>For instance, see McDonald, P. & Charlesworth, C. (2016). "Workplace sexual harassment at the margins." *Work, Employment & Society*, 30(1), 118-134; Madera, J.M., Podratz, K.E., King, E.B., and Hebl, M.R. (2007). "Schematic responses to sexual harassment complainants: The influence of gender and physical attractiveness." *Sex Roles*, 56, 223-230.

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These lengthy time frames mean that an employee may continue to suffer harassment for an extended period before obtaining a resolution.

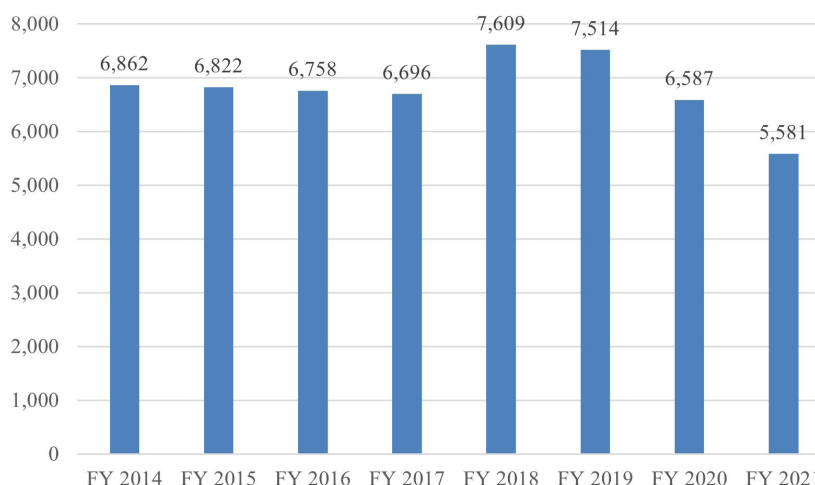
**Attempts to resolve the situation.** Although the percentage of employees who file EEO complaints in response to sexual harassment appears relatively low, another common explanation is that employees who have experienced or observed sexual harassment are able to report, if not resolve, the situation through direct action. For instance, almost 60 percent of respondents reported asking the harasser to stop, and about a third reported the behavior to a supervisor or other officials who intervened.

Although preventing sexual harassment from occurring in the first place is the ultimate goal, stopping it as soon as it occurs is critical to reaching that goal. Federal agencies should also ensure that Federal employees have timely, effective, and trusted alternatives to address sexual harassment when these initial efforts fail or are insufficient to remedy the problem. ❖

**Factoid: Trends in sexual harassment charges outside the Federal Government declined in fiscal years (FYs) 2020 and 2021.**

EEOC recently published data on charges alleging sexual harassment across all non-Federal workplaces. As shown in the chart below, there was an increase in sexual harassment charges filed in FYs 2018 and 2019, the years immediately following the #MeToo movement which focused attention on the ongoing problem of sexual harassment and sexual assault in workplaces. During the next 2 years, the number of charges filed dropped, even below the average of the 4 years prior to the start of the #MeToo movement. This could be due to a heightened awareness of how to avoid behaviors leading to perceptions of sexual harassment. The pandemic and related increased remote work likely influenced reporting, as well. MSPB will look more closely at sexual harassment perceptions in the Federal workforce in an upcoming publication that analyzes data from our 2021 MPS.

**Sexual Harassment Charges Received from Private Sector, State, and Local Government Employees, by EEOC, FY 2014–FY 2021**



Source: "Sexual Harassment in Our Nation's Workplaces." Data Highlight No. 2, EEOC, April 2022.

# The HR Workforce: Gatekeepers of Merit

*The HR workforce plays a critical role in supporting merit, but they are not always supported in that role.*

The 14 prohibited personnel practices (PPPs) are employment-related activities not permitted in the Federal workforce because they violate merit through some form of discrimination, retaliation, improper hiring practices, or failure to adhere to laws, rules, or regulations that support the merit system principles. In other words, protecting against PPPs helps ensure a fair, transparent, and equitable personnel system.



When it comes to ensuring that agencies avoid committing PPPs, human resources (HR) professionals are our front-line workers. They observe, educate, and enforce HR rules to make sure the workforce is free from PPPs. Sometimes that means they cannot meet the demands of a manager who wants a specific outcome or that it takes longer to do their work as they apply processes designed to protect merit. It is important for us to understand the stress this puts the HR workforce under and to provide extra support for them in their critical job duties.

In 2021, MSPB conducted the MPS and asked respondents about their perceptions related to various PPPs. While perceptions of PPPs varied by occupation, a particularly interesting pattern emerged for the HR field. HR staff were more likely than the Governmentwide average to say that they neither observed nor experienced any PPPs (76 percent vs. 71 percent). This is hopeful news because, presumably, those engaged in HR should be particularly skilled at identifying what constitutes a personnel action and when the action would be prohibited.

However, the news is not all good. HR employees were the most likely of all the occupations to say that they personally experienced retaliation for whistleblowing (4.8 percent vs. 2.6 percent average) and retaliation for refusing to violate a law, rule, or regulation (5.1 percent vs. 2.6 percent average). This difference may be explained by the fact that HR staff are more likely to recognize such behaviors, and it could also be that they experience higher levels of retaliation because of their oversight role.

These numbers may appear small, but as the subject matter experts on personnel laws, rules, and regulations, HR staff are in a crucial position to protect the civil service from the commission of PPPs. To be able to do this, they need to be free to report wrongdoing and to refuse to violate laws without fear of retaliation. The MPS data indicates that, for some of them, such a safe environment may not exist. Therefore, we need to do a better job protecting and supporting the HR workforce so that when they see something, they will say something.

There are several ways to support HR employees in carrying out these duties. Agencies should start by educating the non-HR workforce on PPPs and merit system principles so they have a good knowledge base of civil service protections. MSPB has tools available on our website to assist. HR staff could also benefit from more in-depth behavioral training in avoiding PPPs and adhering to the merit principles, along with case studies or lessons learned from the point of view of the HR specialist, so they know what the rules are and how to apply them. This context would provide them with the basis to have honest conversations as they work with managers. Finally, and most critically, they need a work environment where they feel supported so they do not have to fear asking questions or speaking out when they see questionable activities.

MSPB's 2020 research brief *State of the Federal HR Workforce Changes and Challenges* identified a number of issues with how Federal HR staffs are trained and supported in their work. MSPB is preparing to administer a survey of the Federal HR workforce in the next few months to obtain more information about how we can support this mission critical occupation. We encourage agencies to support this effort and HR workers to participate if they receive an invitation to complete the survey. ❖

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Director, Policy and Evaluation

# Help Wanted for Applicant Assessments

*Modernizing the applicant assessment process is still a work in progress.*

In June 2020, President Trump signed Executive Order (EO) 13932, *Modernizing and Reforming the Assessment and Hiring of Federal Job Candidates*. Among other things, the EO reminded agencies of their obligation to use valid, competency-based applicant assessments when hiring Federal employees. It also directed agencies to avoid relying solely on educational attainment as a substitute for competencies or job applicant assessments of their qualifications during the hiring process. The Office of Personnel Management (OPM) issued guidance regarding EO 13932 this past May, noting that the Biden-Harris Administration fully supports the skills-based hiring espoused by the EO that helps hiring managers focus on what job applicants know how to do, not where they learned it.

For many years, MSPB has urged agencies to use valid applicant assessments to help ensure that Federal employees are selected based on their ability to perform the job and not on other non-merit factors. MSPB has noted in the past that agencies have relied heavily on evaluations of training and experience (T&E) (including resumes, occupational questionnaires, and educational level) to determine applicant qualifications. As a matter of fact, in a previous MSPB survey of Federal HR staff, 40 percent said that their agencies used educational level “to a great extent” to assess applicants.

Agencies commonly use T&E assessments because they are inexpensive to develop, widely available, and relatively convenient to administer. They often look at the quantity—rather than the quality—of training or experience that an applicant possesses. They also tend to rely on self-reported information to determine applicants’ level of expertise. Due to these factors, T&E assessments usually are less accurate than assessments designed to measure expertise more directly, such as job tests or simulations. This means agencies are often using less valid assessments that are not good predictors of future job performance. To the extent that the EO and OPM’s implementing guidance reduce agency reliance on less valid assessments, better outcomes should be achieved in agency hiring.

Note that the EO states that agencies should not rely *solely* on educational attainment in assessing job applicants. MSPB has a long-standing recommendation that agencies use a multiple-hurdle approach when evaluating job candidates. This type of approach can help avoid poor selection by using a set of relatively valid assessment procedures to manage the candidate pool and narrow the field of qualified candidates.

Ideally, assessment procedures should be selected and sequenced based on cost and benefit. Methods that are less costly to administer should be used in the beginning stage of the process when the candidate pool is largest. Methods that are more costly to administer should be used toward the end when fewer applicants need to be assessed. Agencies should also weigh the costs and benefits of this approach based on their mix of positions. For example, a rigorous multiple-hurdle approach may not be needed for entry-level positions where intensive training and development will be provided. Hiring managers also should keep in mind that the probationary period is intended to be the final hurdle in a multiple-hurdle assessment approach, and they should be prepared to use it (see MSPB’s report *The Probationary Period: A Critical Assessment Opportunity* for more information).

The multiple-hurdle approach may take more time, effort, and money than just reviewing training and experience or conducting an unstructured interview. However, if conducted properly, the multiple-hurdle approach can increase selecting officials’ ability to predict an applicant’s job success. This should increase the quality of the hire and decrease the costs associated with a poor performer (e.g., training, adverse actions, re-recruiting for the position).

A fundamental hurdle still exists, though, for agencies following the requirements of the EO and OPM’s implementing guidance. Not all agencies have the resources to develop and administer high-quality assessments. To even the playing field, Congress could provide OPM with appropriated funds to centralize the development and validation of high-quality assessment tools that agencies then could acquire at little or no additional cost, particularly for Governmentwide and high-volume occupations. As many of MSPB’s studies over the last 20 years have pointed out, agencies should have better access to the best selection tools regardless of internal expertise or financial capability to develop them. For more information on how agencies can improve their assessment programs, see MSPB’s research brief *Improving Federal Hiring through Better Assessment*. ♦

# Reference Checking: The Fundamentals Still Apply

*An updated look at how reference checks support applicant assessment.*

MSPB's 2005 report *Reference Checking in Federal Hiring: Making the Call* reviewed best practices in this area for hiring managers. Our report predicted that social and technological changes might alter reference-checking practices in future years. Since then, use of email and social media have increased. There are even websites devoted to "no contact" reference checking. Might reference-checking practices have been affected?



In a 2019 journal article, researchers Hendricks, Rupayana, Fisher, and Robie examined current practices for this widely used assessment.<sup>1</sup> The researchers contacted 905 supervisors and coworkers who had been asked to provide references for job candidates within the preceding year. They asked questions about past reference checking and elicited judgments about reference-checking scenarios. Four of their key findings are summarized below.

**References want to help candidates.** Reference providers were asked about their motivations. Their top two reasons were to reward competent workers (43 percent) or assist with a candidate's career change (22 percent). No providers reported motivation to hold poor candidates accountable or help hiring organizations avoid making bad hires. Hiring managers should take this as a reminder that, in general, reference providers are looking out for the candidate.

**References are willing to talk—positively.** Most (95 percent) reference providers agreed to be a reference and followed through on their commitment.<sup>2</sup> The primary reason given by those who refused was reluctance to report negative information about candidates (52 percent). Prior research also found a reliable positive relationship between the number of uncontactable candidate references and future performance problems.<sup>3</sup> It seems "no news is bad news" with respect to reference checking. While a single uncontactable reference is not a red flag, a larger number may be.

**References prefer to discuss job-relevant information.** Reference providers described what was discussed during their reference-checking experiences. The three most frequent topics are directly related to the candidate's job: the type of work the job required (81 percent), the candidate's performance (78 percent), and the candidate's job-related strengths (71 percent). De facto exclusion of poor candidates makes these topics less sensitive than they might otherwise be. The next two most frequent topics require the reference provider to make a subjective judgment: whether the candidate would be rehired (64 percent) and the candidate's potential for future success (60 percent). The least frequent topic, the candidate's weaknesses (36 percent), illustrates the reference provider's aversion to discussing negative information, even when explicitly asked to do so. This is one reason MSPB's study recommended that hiring managers interact with reference providers in real time. Hiring managers can ask direct questions, probe for more information, and ensure their information needs about the job candidate are met, within permissible Federal rules and regulations.

**Make the call.** The researchers found that most reference checking occurred interactively, either by telephone (56 percent) or in person (5 percent). Gathering this information non-interactively using email and websites is much less common (13 percent). This means that hiring managers can do interactive reference checking without concern that they are using out-of-date methods that might discourage reference providers from participating.

This research indicates that reference providers are motivated to help job candidates, rather than hiring organizations. They are willing to share supportive information about well-qualified candidates, while any discussions about problematic candidates are avoided. Even with good candidates, they are less willing to discuss negative information. Because most reference checks still occur interactively, hiring managers can use that interaction to probe for the information they need and increase the effectiveness of the assessment. While time has gone by since MSPB's 2005 report, the fundamentals of reference checking still apply. ❖

<sup>1</sup> Hedricks, C. A., Rupayana, D. D., Fisher, P. A., & Robie, C. (2019). "Factors affecting compliance with reference check requests." *International Journal of Selection and Assessment*, 27(2), 139–151. <https://doi.org/10.1111/ijsa.12243>.

<sup>2</sup> The researchers also report a study of 150,000 job candidates which found 85.3 percent compliance by supervisors and coworkers in responding to reference checking requests.

<sup>3</sup> Hedricks, C. A., Robie, C., & Oswald, F. L. (2013). "Web-based multisource reference checking: An investigation of psychometric integrity and applied benefits." *International Journal of Selection and Assessment*, 21(1), 99–110. <https://doi.org/10.1111/ijsa.12020>.



# How Agencies Hire and Manage Students and Recent Graduates

*Agency CHCOs shared their strategies to attract, hire, and develop students and graduates.*

The merit system principles call for agencies to recruit qualified individuals from appropriate sources to achieve a workforce from all segments of society. Students and recent graduates bring unique perspectives and skill sets to the workforce. Programs designed to hire these candidates are important tools that help agencies build a talent pipeline for Federal occupations. In FY 2022, MSPB sent a questionnaire to agency Chief Human Capital Officers (CHCOs) asking how they recruit, hire, and manage students and recent graduates. Here is a summary of what the CHCOs told us.<sup>1</sup>

**Agencies feel successful in their strategic recruitment and hiring of students and recent graduates.** Most CHCO respondents (17 out of 20) said that their agency is successful hiring students and recent graduates, that student and/or recent graduate hiring is incorporated into their strategic or human capital planning (16), and that they have specific programs designed to hire students and/or recent graduates (16). Furthermore, 17 respondents said that the HR staff is knowledgeable about recruiting and hiring these candidates. However, only 10 respondents felt that hiring managers were knowledgeable in these areas, so this is an area that could use improvement.

**Agencies agree that targeted hiring authorities help improve candidate quality but not necessarily hiring timeliness.** There are a number of hiring authorities available to agencies to hire students and recent graduates, such as the three Pathways authorities and OPM's new authorities under 5 U.S.C. §§ 3115 and 3116. Three-quarters of the respondents (16) indicated that these targeted authorities helped improve the quality of the applicant pool and new hires compared to competitive hiring procedures. Only 10 indicated that these authorities improved the timeliness of the hiring process, indicating that these authorities may not shorten the process, a common complaint among applicants.

**Agencies believe a targeted, multi-tiered recruitment approach is most effective in hiring students and graduates.** Respondents reported using a wide variety of recruitment sources to attract students and recent graduates but ultimately feel that a targeted, multi-tiered recruitment approach is most effective. This strategy often starts with building the agency brand through online and social network activities, and posting positions on USAJOBS and other job boards where students and graduates are likely to see them. They build relationships with targeted colleges and universities (particularly those representing underserved populations) and ensure they have both a virtual and personal presence on campus to increase knowledge of the agency's mission, employment opportunities, and application processes. A personal touch throughout the process is also important.

**Agencies offer multiple options for training and developing students and recent graduates.** The literature is clear that students and recent graduates want a job where they can grow and learn, so training and developmental opportunities are critical for these candidates. Respondents reported supporting students and recent graduates through the following: individual development plans (20), formal training for general competencies (19), on-the-job-training (19), formal training for technical competencies (17), mentors (16), formal orientation/onboarding (15), job rotations (14), and networking and learning opportunities among cohorts (12).

**Agencies still face challenges building a pipeline for students and recent graduates.** Finally, we asked respondents what their top challenges are in recruiting, hiring, or managing students and recent graduates. We received a wide variety of answers to this open-ended question, but the top answers centered around budget and resource constraints, educating and convincing hiring managers to use new authorities and programs, private sector competition, and the length of the hiring process.

Student and recent graduate hiring is changing, particularly with the work OPM has done to provide agencies additional hiring authorities. However, new authorities alone will not solve the problem. Agencies need to put thought into how they recruit, hire, train, and manage these new hires. According to CHCOs, they seem to be on the right track, but there are opportunities for improvement. ❖

<sup>1</sup> MSPB sent the questionnaire to 24 members of the CHCO Council and the representative for the Small Agency Council. We received responses from 16 departments and large agencies and 4 small agencies/organizations.

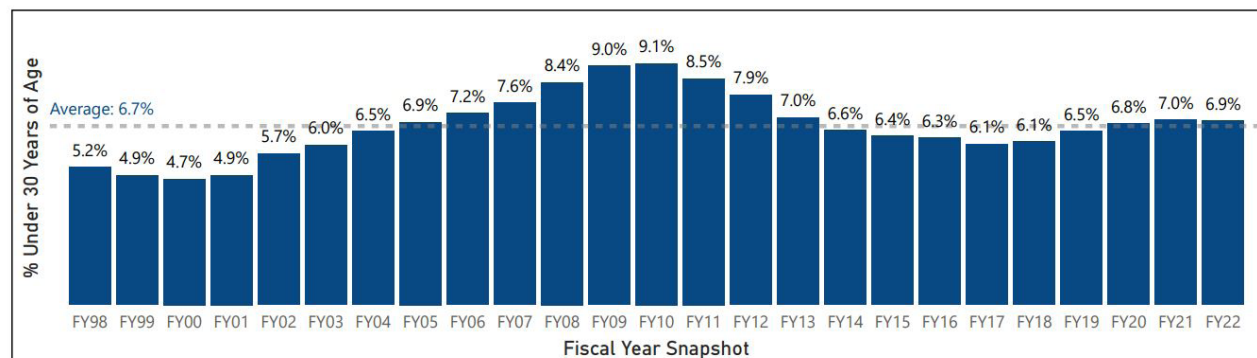
# Focus on the Facts

**Myth:** The percentage of Federal employees under the age of 30 is at an all-time low.

**Fact:** The percentage of Federal employees under the age of 30 has varied considerably over the last 25 years, and the percentage of non-seasonal full-time permanent (NSFTP) employees under 30 as of June 2022 was slightly higher than the 25-year average.

**Focus:** In FY 2022 (through June), 6.9 percent of the NSFTP Federal workforce was younger than 30 years old. This figure is slightly higher than the 25-year average of 6.7 percent. FY 2008 through FY 2011 had the highest representation of individuals under 30, with the proportion ranging from 8.4 percent to 9.1 percent, as seen in the figure below.

**Percentage of the Federal Workforce Under 30 Years of Age, by Fiscal Year**



Source: FedScope, Status Data, FY 1998– 2021 and FY 2022 (through June), NSFTP employees

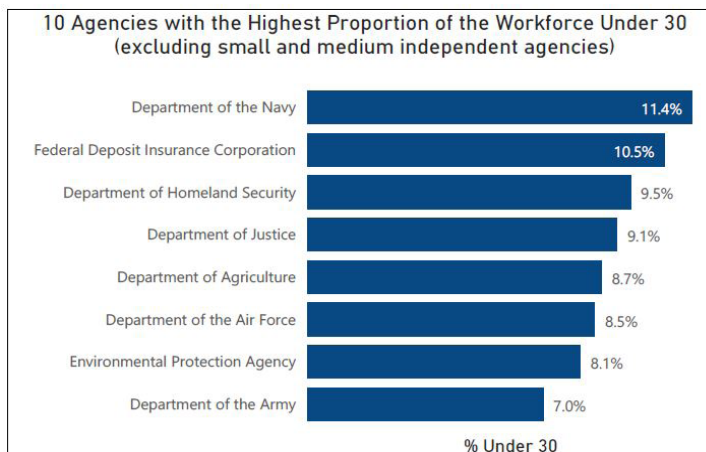
A deeper dive into the FY 2022 workforce snapshot shows some interesting attributes about those under-30 employees.

**Representation:** Some demographic groups have better representation of under-30 employees than others. Female employees represent 43.9 percent of the overall Federal workforce, with a comparable 43.4 percent for those under 30. Hispanic/Latino employees represent 9.7 percent of the workforce but a much higher percentage for individuals under 30, at 12.3 percent. Conversely, Black/African American employees represent 18.7 percent overall but only 13.8 percent of those under 30 years of age. These numbers could have ramifications for representation in the future talent pipeline.

**Agencies:** Similarly, some agencies have a higher proportion of under-30 employees than others. It could be the occupations for which they hire, or it could be that agencies like the Department of Navy and Federal Deposit Insurance Corporations may have lessons they can share with other agencies who have lower representation.

**Occupations:** One of the occupations with the lowest proportion of employees under 30 is Information Technology (2200 occupational series), with only 3.7 percent of the workforce under 30. Given the technology challenges the Nation faces, the lack of a talent pipeline in this area is concerning. Some other technical occupations are faring better.

For instance, 17.2 percent of employees in mathematics occupations and 15 percent in engineering occupations are under 30.



Source: FedScope, Status Data, FY 2022 (through June), NSFTP employees

The lesson is that not all demographic groups, agencies, or occupations are alike. To ensure a strong pipeline into mission-critical positions, agencies should conduct their own workforce analyses to see where they can improve. ❖