

# ISSUES OF MERIT

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## Prohibited Personnel Practices: Patterns of Perceptions

*A recent MSPB report identifies key areas of concern related to PPPs.*

The 14 prohibited personnel practices (PPPs), codified at 5 U.S.C. § 2302, are a set of behaviors that agency officials are not permitted to engage in when they take (or fail to take) personnel actions. Every few years, the Merit Systems Protection Board (MSPB) conducts a survey to ask Federal employees about their perceptions of the workplace, including whether PPPs have occurred. In 2010, 34 percent of Merit Principles Survey respondents reported that they either observed or experienced one or more of the PPPs itemized in that survey. That figure rose to 46 percent in 2016 but decreased to 29 percent in 2021.

Across all three surveys, the most commonly perceived PPP was an attempt to define the scope or manner of a recruitment action, or the qualifications required, for the purpose of improving the chances of a particular person's right to compete for employment. Additionally, within the discrimination PPP, there was a pattern related to which types of discrimination were most frequently perceived. Across all three survey administrations, race, sex, and age discrimination (in that order) were perceived more frequently than the other discrimination PPPs.

However, another pattern emerged. Section 2302(b)(1) (e) of title 5 expressly prohibits discrimination on the basis of political affiliation, while section 2302(b)(3) prohibits pressuring someone to support or oppose a particular candidate or party for elected office. Political discrimination is how a person is treated based on their affiliations and views, while coercion is an attempt to induce certain behaviors in the future. These were the only two PPPs in 2021

**PPPs with an Increase in Perceived Occurrences**

	2010	2021	Increase
<b>Political Affiliation Discrimination</b>	3.2%	7.1%	3.9 pts
<b>Political Activity Coercion</b>	2.3%	4.6%	2.3 pts
<b>Sex Discrimination</b>	11.7%	12.8%	1.1 pts
<b>Appeal or Grievance Retaliation</b>	11.1%	12.1%	1.0 pts
<b>Race Discrimination</b>	13.7%	14.6%	0.9 pts
<b>Disabling Condition Discrimination</b>	7.1%	7.9%	0.8 pts
<b>Religious Discrimination</b>	3.3%	3.6%	0.3 pts
<b>Veterans' Rights Violation</b>	4.5%	4.7%	0.2 pts

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that were notably higher than their 2010 levels. Political coercion perceptions doubled from 2.3 to 4.6 percent, and political discrimination perceptions more than doubled from 3.2 to 7.1 percent.

This is employee perception data—we cannot use it to state what actually happened. However, as the Supreme Court has stated, “it is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent.”<sup>1</sup>

As shown in our recent report, *Perceptions of Prohibited Personnel Practices: An Update*, perception levels for these political PPPs varied greatly by agency, with some agencies having rates two or three times higher than the rates in other agencies. Over half a million Federal employees work at agencies where the perception rate for political affiliation discrimination approached or exceeded 10 percent of survey respondents. Therefore, agencies should look more closely at available survey and workforce data and take seriously the effect that these perceptions can have on their workforce and mission. See our report for more information on these effects and how to address them. ❖

<sup>1</sup>*U.S. Civil Service Commission v. National Association of Letter Carriers, AFL-CIO*, 413 U.S. 548, 565, (1973).

## ANNOUNCEMENTS

### Farewell

Board Member Tristan L. Leavitt, who was nominated by President Biden in 2021 and confirmed by the United States Senate in 2022, departed MSPB on February 28. Prior to his position as Member, Tristan served as the agency’s Acting Chief Executive and Administrative Officer when the Board lacked any members. He had also previously served as General Counsel.

Although there is a vacancy on the Board, Member Leavitt’s departure did not result in the loss of a quorum. Acting Chairman Harris and Member Limon continue to decide appeals and issue study reports on the civil service.

### Thank You

In February, MSPB launched a survey of 35,000 Federal human resources (HR) specialists and assistants across 20 agencies in the Federal Government. The purpose of the survey is to help identify ways to improve the HR function and better support HR staff. The survey has wrapped up at most agencies and will be fully complete soon. We would like to thank all of the respondents who took the time to share their viewpoints and all of the agencies that supported this survey. Stay tuned for more information on the results.

## Celebrating Public Servants Year Round

*Public Service Recognition Week is a great opportunity to acknowledge the important work public servants perform, but we shouldn't limit it to just one week.*

Public Service Recognition Week (PSRW) was May 7–13. First celebrated in 1985, PSRW is a time to honor and celebrate the dedication of Federal, state, tribal, and local employees who devote their lives to serving the public good. It's also a time to educate the public about all of the important work these employees do so that we can encourage the next generation to follow in their footsteps. The week includes online and in-person celebrations, proclamations, and recognition. This year, the General Services Administration developed a toolkit to help organizations acknowledge employees in a fun, celebratory way on social media using #GovPossible.

Sometimes, it's easy to identify the public servants who affect our lives. Some have flashy jobs that are featured in blockbuster movies, like astronauts, spies, or FBI agents. Locally, they are people you regularly encounter, like teachers, librarians, firefighters, and police officers. Then, there are those public servants who work behind the scenes to keep government operating in occupations like human resources, acquisition, finance, and information technology.

This column does not have adequate space to give proper credit to all of the public servants who work tirelessly every day to improve Americans' lives—just as PSRW is not long enough to properly celebrate all that public servants do. So, I encourage us all to find ways throughout the year to continue this celebration and not limit it to just a single week.

There are so many ways to recognize and support those in the Federal workforce for their dedication to public service. I propose a few ideas here, but there are so many opportunities to let public servants know that they are valued and to spread the word about the importance of our work.

The easiest way to support public servants is to just say, "Thank you!" We often do this with our military members—tell them, "Thank you for your service." We could also do this for our civilian public servants. This could include our own colleagues, especially when they seem to be having a challenging day. The words "thank you for your service" can be a powerful mood changer and help re-energize employees in tough times.

We can let agencies know when we've received good service. Did a service representative at Social Security, the IRS, Veterans Benefits, or another agency help you solve a problem? Drop a quick email or website comment to let the agency know.

The Federal rewards and recognition program has numerous ways to celebrate employees throughout the year. Supervisors do not have to wait until the end of the performance cycle to recognize an employee's good work. It is actually more important to acknowledge accomplishments close to the time they happen, rather than waiting until the end of the year. Check your agency's rewards and recognition policies to see what flexibilities are available to you.

Another way to celebrate public service is to spread the word about how important and fulfilling it is. Civil servants should explore ways to connect with students or recent graduates who are in developmental programs or who are interested in Federal internships. Current employees can share their passion for public service and talk about their own career journeys to help the next generation see the benefits and learn from their experiences.

Finally, a less obvious way Feds can celebrate public service is by letting your voice be heard about how well the Federal Government is meeting your career expectations and where improvements can be made. The Office of Personnel Management (OPM) will soon be administering the Federal Employee Viewpoint Survey. I encourage you all to take the time to respond and share with your agency your positive and negative experiences as an employee so we are able to continue building a civil service we can all celebrate. ❖

*Tiffany J. Lightbourn, Ph.D.*

Director, Policy and Evaluation

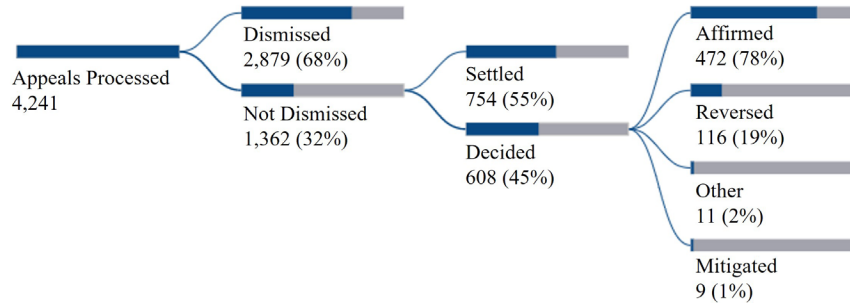
# 2022 MSPB Adjudication Activities

*The Board is back, and cases are moving along.*

Fiscal Year (FY) 2022 was an important year for MSPB. After 5 years without a Board quorum, the quorum was restored on March 4, 2022, and a full Board was in place on June 1, 2022. MSPB is now able to fulfill all of its statutory responsibilities. The agency recently issued its Annual Report for FY 2022 to summarize its activities and provide the public with information about the agency’s operations and performance. Here, we summarize some of the highlights from that report.

In FY 2022, MSPB issued a total of 5,023 decisions, including decisions by the Board, the regional and field offices, and administrative law judges, which cover a variety of case types. The bulk of those decisions were appeals of initial decisions decided in the regional and field offices. Of the 4,241 initial appeals processed, 68 percent were dismissed for lack of jurisdiction or untimeliness. Of the remaining 1,362 cases not dismissed, 55 percent were settled and 45 percent were decided on the merits. Of the 608 cases decided on the merits, 78 percent affirmed the agency’s decision, 19 percent overturned the agency’s decision, 1 percent were mitigated, and the remaining 2 percent were otherwise resolved.

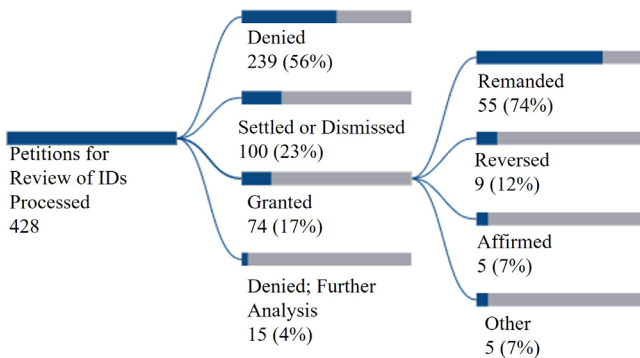
## Outcomes for Initial Appeals, FY 2022



Of the 608 cases decided on the merits, 78 percent affirmed the agency’s decision, 19 percent overturned the agency’s decision, 1 percent were mitigated, and the remaining 2 percent were otherwise resolved.

At headquarters, the Board issued 428 decisions on Petition for Review of Initial Decisions. Of those, 56 percent were denied, 23 percent were settled or dismissed, 17 percent were granted, and the remaining 4 percent were denied but reopened by the Board.

## Outcomes for Petitions for Review of Initial Decisions, FY 2022



\*Because of the lack of quorum early in the year, data for Board decisions reflect those decided from March 4 through September 30, 2023.

Of the 74 cases granted review by the Board, 74 percent were remanded for a new decision, 12 percent were reversed, 7 percent were affirmed, and the remaining 7 percent were mitigated or had other outcomes.

As the Annual Report also points out, the Board issued a number of precedential decisions covering topics such as jurisdiction, performance-based actions, penalties, actions under 5 U.S.C. § 714, affirmative defenses, restoration to employment,

discrimination, whistleblower protections, Special Counsel actions, and Board procedures. See MSPB’s Annual Report for more information.

In addition to the accomplishments reported in the Annual Report, the Board has made significant progress on the inherited inventory of cases created by the 5-year lack of quorum. When the quorum was restored on March 4, 2022, the Board had an inventory of 3,793 cases. Since that time, the Board has decided 1,463 cases from that inventory. Thus, decisions have already been issued in over one-third of the inherited inventory cases. ❖

# The Effect of Unethical Behavior on Employee Engagement and Intent to Quit

*Pressure to act unethically could ultimately affect turnover of engaged employees.*

Research from the private and public sectors demonstrates that a significant number of employees feel pressured to do things they know are wrong or that would compromise their organization’s standards of ethical conduct.<sup>1</sup> That seems to also be the case for some employees in the Federal Government.

MSPB’s 2021 Merit Principles Survey (MPS) of over 30,000 permanent, full-time Federal employees found that 11 percent of respondents agreed with the statement: *In my job, I am sometimes put under pressure to break the rules.* The merit system principles call for employees to maintain high standards of integrity and conduct, and they protect employees against reprisal for reporting violations of laws, rules, or regulations. Therefore, pressure to break the rules is not in line with the intent of the principles that govern the civil service.

Aside from the obvious ethical and legal implications of putting pressure on employees to behave unethically, we also examined how this pressure affected employees’ intent to quit and their engagement level, as defined by MSPB’s employee engagement scale. Using data from the MPS, we examined the complex relationship among our ethics-conflict pressure question, engagement scale score, and quit intentions. The graph below presents the results of this analysis, with statistically significant support for the moderating effect of engagement on the effect of ethics-conflict pressure on quitting intent.

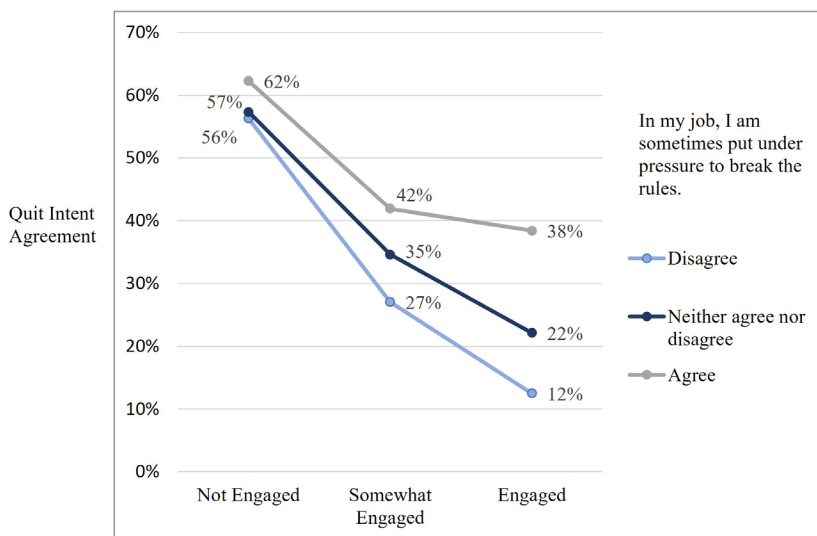
The graph shows that as we move from employees who have low engagement scores to those who are somewhat engaged to engaged, quit intentions diminish accordingly. We also see that as agreement to the question about pressure to break rules increased from disagree to agree, quit intentions—regardless of engagement level—increased as well.

Most importantly, we see that among the engaged employees, quit intentions varied widely according to how much pressure they were under to break rules, with quit intentions showing a range of 26 percentage points (from 12 to 38).

On the other hand, quit intentions of employees who are not engaged varied very little in the face of this pressure, evidencing a range of only 6 percentage points (from 56 to 62). These ranges indicate that while their quit intentions are generally lower than their unengaged counterparts, engaged employees appear to be more sensitive to pressure to break rules than those not engaged. This may be taken as a warning that such pressure appears to prompt engaged employees to consider quitting more so than those who are not engaged.

The desire to leave one’s work unit in the face of pressure to behave unethically is unfortunate for the agency due to the potential loss of an engaged employee. It is also testament to the ethics of Federal employees— particularly those who are engaged—many of whom report increased quit intentions when they feel pressure to behave unethically. ❖

**Quit Intentions by Engagement Level and Feeling Pressure to Break Rules, MPS 2021**



<sup>1</sup> Two examples of this research are the following: Ivcevic, Z., Menges, JI., and Miller, A. (2020). How common is unethical behavior in U.S. organizations? *Harvard Business Review*, and Donde, G., Institute of Business Ethics. (2018) Ethics at Work: 2018 Survey of Employees - Europe.

# Laid-Off Tech Workers: A New Talent Pool for the Federal Government?

*Agency efforts are underway to recruit top IT talent after private sector tech downsizing.*



The information technology (IT) industry is known for its fast-paced and constantly changing landscape, which can sometimes result in job insecurity for workers. As private companies continue to lay off tech workers, the Federal Government, specifically OPM and the Department of Veterans Affairs (VA), are looking to recruit these highly skilled individuals to fill critical vacancies.

OPM is actively seeking out laid-off tech workers through virtual job fairs, a specialized online job posting board, a proposed new Federal cyber workforce pay model, and other recruitment efforts. In January, OPM and other Federal agencies held a virtual job fair targeted at IT professionals and launched a new Federal Tech Portal for IT talent on USAJOBS, the Federal Government's official employment site. The new job posting board provides a central location for job seekers to find and apply for IT positions across the Federal Government. OPM also approved a Special Salary Rate (SSR) for Federal employees working in classified IT and cybersecurity positions. SSRs have a higher rate of pay than the General Schedule pay scale and are designed to help the Government compete with the private sector for top talent. In addition to a higher base salary, Feds who receive SSRs may also be eligible for other benefits, such as recruitment and retention bonuses and relocation expenses.

VA's Office of Information Technology has also been working to attract top tech talent to support its mission of serving the nation's veterans. VA has launched several efforts to attract laid-off tech workers, including designating an email address to field any questions that potential applicants may have. The agency has also adopted a new remote work policy which helps to expand recruitment efforts throughout the country. Applicants no longer need to consider moving to the DC metro area to work for VA. These efforts have helped the Department fill approximately 25 percent of its vacancies and demonstrates its commitment to recruiting and retaining talented tech professionals.

The Federal Government has an increasing need for technology workers to build and maintain its information technology systems, websites, and cybersecurity defenses. Recruiting laid-off tech workers can be a win-win situation for both the workers and the Government. The Government gets access to a pool of talented and experienced workers, while the workers get stable employment with good benefits and the opportunity to use their skills to serve the public.

Keep in mind that recruiting IT talent is just the first step in addressing the Government's tech needs. Agencies also need to employ strong retention strategies. Tech workers are used to flexible work environments, the latest technology tools, access to training, and opportunities for challenging work. To keep the talent recruited through these new efforts, agencies will have to ensure they have a supportive infrastructure to retain tech talent, as well. ❖

## Attracting and Hiring Federal Interns

OPM and agencies have also launched new efforts to attract and hire Federal interns. In February 2023, OPM launched a USAJOBS portal for Federal internship positions. The site is touted as a one-stop shop for prospective candidates to find opportunities and apply for internships in the Federal Government.

Also in February, OPM hosted a virtual internship webinar to educate potential applicants about Federal internship opportunities and let them hear from agency representatives who had started their careers as interns.

In January 2023, OPM released agency guidance on how to increase internship and other student and early career opportunities.

The new portal, guidance, and outreach are part of OPM's efforts to deploy tools agencies can use to increase prospects for early career professionals and open more avenues for agencies to recruit top talent.

# Using CAPS to Improve Your Agency's Job Announcements

*CAPS knowledge can help identify job marketing strategies.*

MSPB's 2021 research brief *Confidence in Ability to Perform Successfully* highlights the significance of an employee's belief in their capability to perform tasks and meet job expectations, also known as CAPS.<sup>1</sup> As the brief describes, CAPS has implications for various factors related to managing employees, such as employee engagement, job performance, training and development, goal setting, and job design. Managers can use knowledge about CAPS to create effective job structures that cater to their employees' different individual needs, such as providing a supportive work environment, adequate training and resources, clear expectations, and opportunities for autonomy, challenge, and growth.



Research also suggests that knowledge about CAPS can assist in advertising jobs and appealing to applicants. High CAPS applicants exhibit distinct behavior when job searching compared to their low CAPS counterparts.<sup>2</sup> For example, high CAPS individuals are more likely to pursue a larger number of leads and persist through discouragement during their job search. High and low CAPS job searchers are also attracted by different features of jobs and how these features are emphasized. HR specialists and hiring managers should consider CAPS differences when crafting job announcements to ensure that they are appealing to a range of potential candidates with different CAPS levels.

Low CAPS applicants may be more attracted to jobs that provide support and encouragement. To appeal to this group, job announcements should emphasize aspects such as a supportive work environment, team collaboration, adequate training to master job tasks, and skilled management to ensure workload fairness and reasonable expectations. Highlighting these factors can increase the appeal of the job to applicants who may have high potential but lower levels of confidence in their ability to perform successfully.

High CAPS applicants may be more attracted to jobs that provide opportunities to make a difference and support for personal growth. For these applicants, job announcements should emphasize ways that an employee can contribute and have an impact by highlighting anticipated future achievements of the workgroup and benefits of what the workgroup does for the public or more specific stakeholders. The announcement can also emphasize opportunities for individual or customized contributions and the chance to increase related skills and capabilities. By highlighting these factors, managers can attract high CAPS applicants who seek to make a meaningful impact and grow professionally in their jobs.

Job analysis can provide insights into whether a job may generally appeal to employees with a particular CAPS level. However, many jobs can appeal to both high and low CAPS applicants. Note that the lists of job features in the preceding paragraphs are not mutually exclusive—and may describe the same job. To attract both high and low CAPS applicants, the key is to emphasize different aspects of that job. For example, availability of training may appeal to both groups, as we have noted. However, low CAPS applicants may be more interested in the assurance that training will be adequate for the tasks required by the environment, while high CAPS applicants may be more intrigued by the opportunity to specialize their skills in a direction of interest or learn untried skills in an area of innovative technology.

By emphasizing both high and low CAPS perspectives in job announcements, HR and hiring managers can attract a wider range of applicants and create a workplace that is inclusive of employees with different perspectives on their work. ❖

<sup>1</sup>The CAPS research brief describes the 6-item scale used to assess CAPS on the 2016 Merit Principles Survey and suggests less formal ways that supervisors can estimate the CAPS level of their employees.

<sup>2</sup>McGee, AD. (2015). How the perception of control influences unemployed job search. *Industrial and Labor Relations Review*, 68 (1), 184–211.