insights & analyses for Federal human capital management

Issues of Merit

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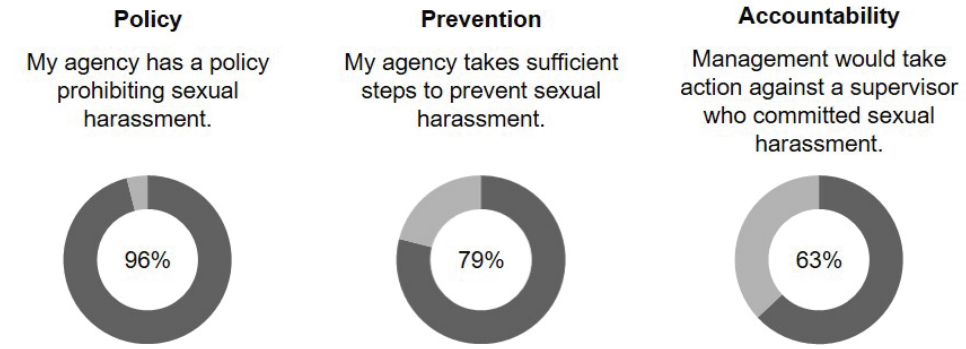
Combating Sexual Harassment

What are Federal employee perceptions of agency strengths and weaknesses?

The #MeToo movement raised awareness that sexual harassment remains an all-too-common occurrence in workplaces, and results from the Merit Systems Protection Board's (MSPB) 2016 Governmentwide Merit Principles Survey (MPS) show that Federal agencies are no exception.

The good news is that almost all employees are aware that their agency has a policy prohibiting sexual harassment, as shown in the figure below. That result is consistent with the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), which requires Federal agencies to annually notify all employees of "the rights and protections available to them under the Federal antidiscrimination laws and whistleblower protection laws."

Employee Perceptions of Agency Efforts Related to Sexual Harassment



Yet the survey results also show that near-universal awareness of agency policy does not translate into equal confidence in agency practice. Seventy-nine percent of employees agreed that their agency takes sufficient steps to prevent harassment. Should harassment by a supervisor occur, only 63 percent of employees agreed that management would hold that supervisor accountable.

While the majority of employees expressed confidence in their agencies on each of the three items, it is important to note that there was lower agreement regarding prevention and particularly accountability. This reflects the general truth that it is easier to issue a policy on paper than to take action in practice, particularly when "action" may involve investigation and discipline. Nevertheless, a closer look at the survey results suggests that employee

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U.S. Merit Systems Protection Board

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Our Mission
The MSPB Office of Policy and Evaluation conducts studies to assess the health of Federal merit systems and to ensure they are free from prohibited personnel practices.

Issues of Merit
We offer insights and analyses on topics related to Federal human capital management, particularly findings and recommendations from our independent research.

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confidence may be based more on expectations than experience. As shown in the table below, employees who had experienced sexual harassment were much less positive about prevention and accountability than those who had not.

Survey Responses by Employee Experience of Sexual Harassment

Did They Experience Harassment?	Policy	Prevention	Accountability
	My agency has a policy prohibiting sexual harassment.	Agency takes sufficient steps to prevent sexual harassment.	Management would take action against a supervisor who committed sexual harassment.
Yes (Experienced Harassment)	94%	57%	39%
No (Did NOT Experience)	96%	83%	67%

It is logical that employees who have experienced sexual harassment are less likely to believe that their agency did enough to *prevent* it. But it is not reassuring that employees who have experienced sexual harassment have a pessimistic view of how their agency *responds* to it.

These results reinforce that virtually all Federal employees know that sexual harassment is prohibited, as it is contrary to law and core values such as fair treatment of employees and effective management of the workforce. But agencies still have work to do to put policy into practice. That is a more challenging task that requires agencies to create a culture that is fair, inclusive, and open; establish and educate employees regarding complaint processes that are trusted, timely, and thorough; and hold harassers accountable, regardless of their status or title. ❖

What should MSPB study next?

Would you like to see one of your ideas included in MSPB's research and discussed in a future *Issues of Merit* article or MSPB report? This may be your chance!

During the next several months, we will be developing our new research agenda—the studies we will undertake over the next few years. We would like to hear your ideas about what we should study. For example, what do you think is the most important issue affecting the management of the Federal workforce? What is something in the Federal workplace that should be done more fairly? More efficiently? More effectively?

Our previous studies, latest research agenda, and past editions of *Issues of Merit* are available at www.mspb.gov/studies. Perusing these is a good way to learn about the kind of research we conduct.

If you are interested in contributing ideas to our research agenda, you may use the feedback form available through the "Research Agenda 2020" link at www.mspb.gov under "Of Note" or email ideas to researchagenda2020@mspb.gov by early June. We look forward to hearing from you!

Win, Lose, or Draw

Let's not give too much weight to individual success rates at MSPB.

On February 28, 2019, the House Government Operations Subcommittee held the hearing *Effects of Vacancies at the Merit Systems Protection Board*. A witness stated that the low win rate for individuals who assert whistleblower retaliation claims before MSPB Administrative Judges (AJs) demonstrates AJs' "hostil[ity]" toward whistleblowers. A second witness noted that agencies win before MSPB "the great majority of the time." Later, a member of Congress asked how often MSPB "overturn[s]" personnel actions. Should we attach much significance to the rate at which individuals prevail at MSPB? Probably not.

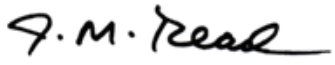
In the 5-year period that ended September 30, 2018, MSPB AJs closed over 26,000 cases, not including 33,000 sequestration furlough appeals. In about 3 percent of those 26,000 cases, individuals received some form of AJ-ordered relief (e.g., cancellation or mitigation of a personnel action; back pay; retirement benefits). Almost 5,000 of those cases were decided on the merits—that is, cases that were filed on time, within MSPB's jurisdiction, and not resolved by settlement. Of those 5,000 cases, the annual rate at which individuals received some sort of relief varied between 16 and 22 percent, with the 5-year average being 18.2 percent.

If one were to recommend that MSPB's effectiveness or neutrality be based on figures such as these, one should also be prepared to identify what the "right" individual success rate should be. For instance, statistics published by the Equal Employment Opportunity Commission (EEOC) show that individuals prevailed in 2.7 percent of all employment discrimination complaints lodged against Federal agencies that were closed in FY 2015.[1] This win rate is virtually identical to the win rate for individuals in all cases closed by MSPB AJs during the same period. Does that make this "the right" number? Maybe one could claim that the individual win rate at EEOC is also too low. Rather than citing win rates as if they mean something in a vacuum, we should instead be able to point to specific decisions and explain how they were based on a misinterpretation of the law, an incorrect weighing of the evidence, or some other error. It is unconvincing to suggest that some decisions in favor of agencies must be wrong simply because there are a lot of them.

There are additional reasons why citing win rates without context is unhelpful. For the 5-year period ending September 30, 2018, 22 percent of all cases closed by MSPB AJs were resolved by settlement. If agencies had refused to settle cases that they believed they were likely to lose, then the individual win rate would have been higher. It hardly seems an improvement, however, to have more litigation and fewer negotiated resolutions. Likewise, the individual win rate at MSPB would go up if agencies took more unjustified personnel actions, but here too it would be perverse to wish for agencies to act recklessly. One would hope that a neutral adjudicator would not let consciousness of individual win rates affect day-to-day decisionmaking. Imagine overhearing a basketball referee remark that he intends to call more fouls on the home team in the second half because he called just a small number of fouls on that team in the first half. You would rightly wonder whether the referee understood his responsibilities. Similarly, in deciding a particular case it would be inappropriate for an AJ to consider how often he ruled for one party or the other in past unrelated cases.

This is not to say that MSPB is or should be unaccountable. MSPB's published annual reports in the 5-year period ending September 30, 2018 show that MSPB's reviewing court affirmed between 92 and 96 percent of the MSPB decisions appealed to it. This is a good indication that MSPB is getting it right pretty consistently. Moreover, when policymakers have come to believe that MSPB is misinterpreting or misapplying the law, they have amended those laws, as they chose to do with the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017.

In the end, the real value of a dispute-resolution body such as MSPB lies in the fact that it is available. If the actions of Federal agencies toward employees were not subject to review, one could reasonably expect agencies to mistreat their employees more often than they do. Where there is review, however, the win rate of employees who choose to appeal personnel actions and do not negotiate settlements means little in the abstract.❖



Director, Policy and Evaluation

[1] See EEOC, *Annual Report on the Federal Workforce*, *Fiscal Year 2015*.

The Rise of the Occupational Questionnaire

Recent hiring reforms may have had unintended consequences for applicant assessment.

The 2010 Federal hiring reform eliminated essay-style questions from the initial application process. The intent was to reduce applicant burden, improve applicants' experience with the hiring process, and make the process faster. These are laudable goals but may have had unintended consequences for agencies' ability to evaluate applicant qualifications.

Prior to the reform, agencies rated and ranked applicants largely based on written descriptions applicants provided of their knowledge, skills, and abilities (KSA) in specific job-related areas. For instance, a popular KSA asked the applicant to "describe your ability to communicate effectively in writing." Most often, applicants were required to write several narratives for each application, making the process extremely time consuming—especially when compared to private sector practices. Although these ratings often were not rigorously validated assessments, some believed that they provided valuable information for hiring managers while discouraging unqualified or casual applicants from applying. Others argued that the KSAs were so burdensome that they discouraged the best applicants from applying.

To replace the old KSA process, agencies began relying on occupational questionnaires to evaluate applicant qualifications. Occupational questionnaires are typically a series of multiple choice questions that attempt to determine whether applicants meet the eligibility requirements for the job and to rate and rank applicants' skills. These assessments typically ask applicants to rate their own level of expertise in specific areas.

Because these assessments focus on self-reported evaluations, they are less accurate than assessments designed to more directly measure expertise, such as job tests or simulations. Furthermore, when conducting interviews for our perspectives brief *Improving Federal Hiring Through Better Assessment*, agency representatives expressed concerns that applicants are rating themselves as experts in every category because they have learned that is the only way they will make it to the next phase of the hiring process. These types of inflated ratings negatively affect the agency's ability to make valid distinctions among candidates if sufficient controls are not in place to validate the self-reported ratings. Many agencies just do not have the resources to commit to that validation effort—especially with the rise in the number of applications they have been receiving since the application process has been streamlined.

Current Occupational Questionnaires

A typical eligibility question might read:

Choose one answer that best describes your experience:

- I possess at least 1 year of specialized experience equivalent to the GS-13 grade level performing work related to the duties of the position described in the job announcement.
- I do not meet the requirement as described above.

A typical question to determine relative abilities might read:

What best describes your level of proficiency in processing, manipulating, and analyzing large data sets?

- I have not worked with such data sets.
- I have worked with these kinds of data sets under the direction of someone more experienced.
- I have worked with such data sets independently with minimal supervision.
- I am an expert at working with such data sets and am consulted by others.

Some agencies are striving to improve the quality of the occupational questionnaires they use. For instance, the Defense Logistics Agency reported revamping its questionnaires to move from default scales whereby everyone rated themselves at the expert level to customized responses that are based on expertise benchmark levels. The Office of Personnel Management (OPM) is also providing training to help agencies improve the development of good, benchmarked questionnaires. However, developing good benchmarks is not an easy task and will take additional skill and expertise from human resource and assessment staffs. A number of agencies also reported pairing occupational questionnaires with other assessments that have higher validity, like structured interviews and reference checks.

While occupational questionnaires may serve as an adequate screen for some eligibility criteria, MSPB has urged OPM to find ways to make high-quality assessments more accessible to agencies that do not have the resources to procure them. ❖

Considerations for Integrity Testing

Much has been written about making Federal hiring faster and simpler. But Federal hiring also needs to become *better* if the merit system principle of "selection on the basis of relative ability" is to mean something more than picking the candidate with the shiniest resume and the brightest smile and hoping for the best. Integrity tests could be an option.

What is integrity and why does it matter? The online Cambridge Dictionary defines integrity as "the quality of being honest and having strong moral principles that you refuse to change." Integrity is essential to the fair and lawful exercise of Government powers and to public trust in Government. OPM's online assessment and selection guidance indicates that a lack of integrity in employees is associated with counterproductive behaviors such theft, violence, sabotage, and absenteeism. Other research shows that an absence of integrity in organizations is implicated in prohibited personnel practices, corruption, and even political instability.[1]

Can integrity be used in hiring decisions? Yes. First, as noted above, integrity is job-related. Second, integrity is already part of Federal hiring through the suitability and clearance processes. (We note that an integrity test is not a substitute for these processes.) Finally, integrity can be reliably and usefully measured. Consistent with rigorous professional research, OPM's assessment and selection guidance further notes that "[i]ntegrity tests have been found to measure some of the same factors as standard personality tests, particularly conscientiousness, and perhaps some aspects of emotional stability and agreeableness" and have acceptable face validity and little or no adverse impact.

How do integrity tests work? There are two broad types of integrity testing. A personality-oriented test is indirect, using items about characteristics that are related to integrity. An overt test is direct, using statements or questions about integrity-related behaviors and attitudes. A sample statement from such a test might be, "Under the right circumstance, it is okay to steal from your employer." The result is a measure of a candidate's skill at impression management and ability to reject clearly unacceptable behaviors. While this strategy may seem too obvious to succeed (won't every applicant just provide the "right" answers?), it turns out that while most people can pass the test with ease, some cannot. That is why an integrity test can work—but it does limit how the results can be used.

How are the results of an integrity test used? Unlike most assessments, which are used to identify the most promising candidates, an integrity test is generally used to identify the least promising candidates. The goal is to screen out the small percentage of candidates who are clearly problematic or likely to fall out at later, more costly stages of the hiring process (such as the background investigation). Used this way, the integrity test is a form of insurance: it guards against spending too much time and money on a candidate who should not be hired.

What are some possible costs and benefits of integrity tests? Integrity tests are specialized assessments with a specialized use. Unlike occupational questionnaires, they cannot be the primary or default assessment for every job to be filled. They are best suited to jobs with a high volume of applicants, a high cost per hire, and a high cost of error. The table below outlines some potential costs and benefits of adding an integrity test to the hiring process.

Costs	Benefits
• Resources. Money and time may be needed for administration, scoring, and integration. • Time. The integrity test will add a step to the hiring process. • Integration. Assessment and decisionmaking processes—and perhaps automated systems—will need to be modified.	• Avoiding a bad hire. The integrity test may screen out a "bad actor" who might otherwise slip through the cracks. • Branding. Integrity tests can send the message that integrity is truly important to the organization. • Efficiency. Integrity tests can help screen out applicants before they reach the more costly assessments or lengthy background investigations.

Are integrity tests the answer to all the Federal Government's hiring challenges? No. But under the right circumstances, they may be part of the solution. ❖

[1] Huberts, L. W. J. C. (2018). "Integrity: What it is and Why it is Important," *Public Integrity*, 20: S18–S32.

Remedying Unacceptable Performance

The reason unacceptable performance is hard to address has a lot to do with the causes.

For decades, the Federal Government has been seeking useful means to address the issue of Federal employees whose performance at work is unacceptable. The law defines unsuccessful performance as "performance of an employee which fails to meet established performance standards in one or more critical elements of such employee's position." MSPB's 2016 MPS asked supervisors of unsuccessful performers what caused the unsuccessful performance and how well various solutions worked. The data provided four main findings:

A good way to prevent future unacceptable performance is to hire the right people in the first place. The two factors that supervisors perceived as playing the greatest roles in employee performance deficiencies were the employee's disinterest in doing the necessary work to succeed and the employee not being suited for that particular job. These issues are often the result of poor selection choices. Therefore, solutions to address these causes of unacceptable performance are related more to improving hiring and selection practices than performance management procedures.

Unacceptable performance does not have a single solution. The MPS provided supervisors a list of 14 common methods for dealing with performance problems and asked supervisors how effective they found each method to be. All of the listed solutions worked for at least some supervisors, but none worked for all. That indicates that the best method to address unacceptable performance will depend on the unique situation.

When unacceptable performance exists, supervisors spend a lot of time trying to address it. Approximately three-quarters of supervisors of unacceptable performers reported attempting at least 10 different approaches for addressing the performance problem of their most recent poor performer. This likely represents a substantial investment of time and resources. Furthermore, no solution was rated by more than 47 percent of supervisors to be effective to at least some extent. Therefore, supervisors are using many methods to address the unacceptable performance, but they do not seem to believe that these solutions are generally effective.

Demotions and reassignments are viable alternatives to removing unacceptable performers. When discussing unacceptable performers, people often jump to the conclusion that terminating the employee is the desired outcome. However, there may be less severe types of personnel actions that also serve the public interest. Provided that there is good reason to believe the employee will perform effectively in a different position, then demotions and reassignments are viable alternatives. Sixty-two percent of supervisors supported reassigning employees if they seem more likely to succeed elsewhere. This may be particularly appropriate for those situations where the unsuccessful performance is caused by poor job fit.

For more detail on this data and further discussion of this topic, keep an eye out for our upcoming research brief, *Remedying Unacceptable Employee Performance in the Federal Civil Service*. ❖

Farewell to Mark A. Robbins
MSPB Member, Vice Chairman, and Acting Chairman

On March 1, MSPB bid a fond farewell to Mark A. Robbins. Mr. Robbins was nominated by President Obama on December 5, 2011, to serve as a Member and was confirmed by the Senate on April 26, 2012. On January 23, 2017, President Trump designated Mr. Robbins Vice Chairman, and he also served as Acting Chairman during that time.

Mr. Robbins oversaw MSPB through an historic time. Never had the Board gone so long without a quorum, meaning it was unable to vote on a number of important issues or to release merit system reports to the President and Congress. Under the Acting Chairman's leadership, the agency continued to provide as many important services to the Federal community as possible. We appreciate the keen leadership he provided and wish him well in his future endeavors.

Are Federal Employee Position Descriptions Accurate? (And Why We Should Care)

Although most Federal employees believe their position description is an accurate reflection of their duties, there is room for improvement.

In the Fall 2014 *Issues of Merit*, we discussed the importance of position descriptions (PDs). PDs not only provide the basis for qualification requirements and pay administration, they are also the foundation for vacancy announcements, training needs assessments, employee performance appraisals, and organizational position management. Because PDs are important to so many essential management and human resources (HR) processes, it is critical that managers ensure PDs in their organizations are accurate and sufficiently detailed.

In response to our 2016 MPS, 70 percent of employee respondents said that their PD was an accurate reflection of their current job duties. That seems reassuring. In a system in which PDs are the foundation for so many management decisions, however, the potential cost of error is high. Thus, it is somewhat unsettling that 30 percent of employees reported that their PDs were not an accurate reflection of their current job duties.

One reason that employees may perceive their PDs being less than accurate could be excessive standardization of PDs. Our Spring 2015 *Issues of Merit* noted that as the number of position classification specialists was reduced dramatically throughout the 1990's, agencies began to rely more heavily on standard PDs that managers could certify with little or no input from HR staff. In fact, in response to the MPS 2016 survey, 81 percent of agency leaders (supervisors, managers, and executives) said they used standardized, pre-classified PDs to a moderate or great extent. Standardization makes sense for jobs that are populous, stable, and homogeneous. But for jobs that are diverse or dynamic, standardization can introduce a risk that the organization misses something important about a particular position—and "pre-classification" eliminates the step that could surface discrepancies between paper and reality.

81 percent of agency leaders said they used standardized, pre-classified PDs

* * * * *

58 percent of agency leaders said they received assistance in classifying positions

* * * * *

73 percent of HR specialists reported spending no time on classification

A second reason employees could perceive their PDs as being inaccurate is that the assistance managers receive with position classification may be inadequate. In the 2016 MPS, only 58 percent of agency leaders said they received assistance in classifying positions from their servicing HR office to a moderate or great extent, while 17 percent said they did not receive such assistance at all. Echoing the reduction in the number of position classification specialists mentioned above, only 3 percent of Federal HR specialists responding to a 2011 MSPB survey reported spending more than half of their time on position classification duties, and 73 percent reported spending no time on classification. Not surprisingly, one result appears to be reduced management access to expert advice on issues of job design and position classification.

One critique of the current position classification system is that it expects levels of foresight and stability that are unrealistic in today's fast-paced world, and that work has become too unpredictable and dynamic to be formally documented. Most employees, however, do not seem to believe that the accuracy of their PDs suffers from a dynamic environment—only 21 percent of 2016 MPS respondents agreed that functions and roles in their organization change too frequently to be captured accurately in a PD.

There could, of course, be other reasons why an organization's PDs are inaccurate—from management neglect or ignorance to attempts to save time in the short term. Given the number of processes that rely on accurate PDs, spending time ensuring accuracy will certainly pay off in the long run. ❖

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