Federal Employment Law Training Group
Teaching the Law of the Federal Workplace

FELTG Newsletter Vol. X, Issue 2 February 14, 2018

So, what did you think about the recent negotiations on Capitol Hill, the ones that led to the recent government shutdown(s)? I hope you didn't take notes and plan to use the tactics you saw the next time you are trying to negotiate a settlement, or a Last Chance Agreement, or a collective bargaining agreement. Both during and after the bargaining, the negotiators engaged in name calling and gloating. "I hope they see the mistake they made." "They finally came to their senses." "What were they thinking? They got nothing." Several members of Congress and the Senate could be seen on television posturing for their side in the bargaining, taking the position that "We were right and those idiots over there are idiots." Folks, if you're in the business of federal employment law, please appreciate that stuff like we saw on FoxNews and CNN is politics; it is not intended to be a lesson in effective negotiation. If you and I negotiate a resolution to a mutual problem, and later I hear you telling people how foolish I was and how smart you were to force me into a one-sided resolution favorable to your side, how do you think I'm going to react the next time we sit down and you suggest we work together on a new issue? We saw too many leaders after the negotiations saying politically, "Those guys were stupid; we won!" As we teach in our negotiations classes, the more productive approach would have been to say something like, "Both sides had strong feelings. There was a lot of productive discussion and compromise. We congratulate our counterparts and thank them for their hard work and flexibility." Because, my friends, civil service negotiations are not politics nor are they divorce court; they are like marriage counseling in which the long term is more important than the immediate feel-good gain. Come to our seminars and learn how to negotiate like a pro, not like a politician.

Bill

COMING UP IN WASHINGTON, DC

Absence, Leave Abuse & Medical Issues Week
March 27-30

EEOC Law Week
April 9-13

Writing for the Win: Legal Writing in Federal Sector EEO Cases
May 8-10

JOIN FELTG IN ATLANTA

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Series begins March 6. Discounts available.

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Bug Bites: How Do You Handle an Employee Who Brings Bed Bugs in to the Office?
By Deborah Hopkins

A few days ago, I got an interesting hypothetical question from a long-time FELTG reader, and it was such a good one I thought I'd share it with the rest of you. It's something I hope is always hypothetical and you never have to deal with in real life. Here we go:

> Hi FELTG,
>
> I have attended many of your trainings and your instructors have even been out to my agency to train our lawyers and HR personnel. I have a hypothetical strange case that I was hoping I could bounce off of you all.
>
> Hypothetically, what should an agency do if it has an employee who is bringing bed bugs into the office? Let's say the agency has already paid for an exterminator once and the exterminator confirmed that this employee's office was the source of the infestation. Let's also say that the employee's supervisor has talked with the employee to notify her of the problem (if she wasn't already aware), and she told management that she would address it.
>
> Now let's say it's a few weeks later and there are still bed bugs in the office, and it's so bad that other employees are getting bit. Because coworkers getting bit by the bedbugs, this is hypothetically creating a massive morale issue in the office. What do you think a hypothetical agency should do in a case like this? Here are some thoughts:
>
> 1. Do I give him an order and then discipline him if he doesn't follow that order? Is my order "Do not bring bed bugs into the office"?
>
> 2. Do I indefinitely suspend him until such time as he can prove to the agency that he has addressed the problem at his home?
>
> 3. Do I put him out on enforced leave (I don't like this option)?
>
> 4. Do I allow him to come to work but separate him from everyone else and force him to bring a change of clothes each day that is in a sealed plastic bag?
>
> I'm assuming that someone must have dealt with something like this before. Do you have any thoughts?

And here's the FELTG response:

Dear well-thought-out FELTG reader,

What an interesting hypothetical you've presented to us. While this person's behavior clearly involves employee safety and health, it's also misconduct - and as you know from being a long-time FELTG reader, charging misconduct is fast, easy, and free. You give her an order, thereby making it her problem to resolve, and "Do not bring bed bugs into the office" is a clear, understandable order. Of course, you'll document this conversation with her.

If you're not going to fire her when she violates the order (if you determine the misconduct does not rise to the level of removable misconduct under *Douglas*) you can even do an indefinite suspension until she demonstrates medically she is free of the little critters, see, e.g., *Pittman v. MSPB,* 832 F.2d 598 (Fed. Cir. 1997); *Moe v. Navy*, 2013 MSPB 43 (June 14, 2013), which don't deal with

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bedbugs but say that an agency can indefinitely suspend an employee, pending inquiry, for psychological or other medical reasons if the agency has a sufficient objective basis for doing so. We never have to tolerate unsafe or, for lack of a better term, unsanitary, conduct in the workplace.

No need to do enforced leave, and (not legal advice, just personal advice) I wouldn't do Option 4 because the plastic bags might not work, and it would just drag out the inevitable.

Thanks for the note, and good luck if a case like this ever presents itself in real life! ;)
Hopkins@FELTG.com

How to Write a Robust Critical Element
By William Wiley

Few supervisory responsibilities are less clear than how to write a good critical element. Goodness knows it's not for lack of "guidance." The performance management world is full of important-sounding words and concepts: maximizing S.M.A.R.T. performance standards, GEPRA cascading goals, quality/quantity/timeliness. And then we have mandatory generic standards written by somebody in HQ who doesn't know diddly about how things are done out here in the field and don't really say anything worth saying: "empowering," "transparency," "learning-based approach," "bottom-up buy-in," "cascading goals," and this season's favorite useless phrase: "promoting engagement." Aauugghh.

If you're like most experienced Federal supervisors, you've probably come to the conclusion that this performance management stuff is just a bunch of B.S. dreamed up by some overly-intelligent Human Resources specialists to keep us worker bees busy. It all may sound good and worthwhile, but as a practical matter, it does you little good when it comes to actually managing employee productivity and getting the job of government done.

Well, we agree. To a point.

First, let's start with the law. Whether we think that performance appraisal is worth a bucket of warm spit or not, we have to do it. The *Civil Service Reform Act of 1978* mandated it throughout government, and there is little likelihood that Congress will be changing that aspect of the law any time soon.

Next, we come to the minimum you have to do. As a Federal supervisor, you are required to create at least one critical element (CE) in each performance plan you write. For each CE, you must create a performance standard by which you will rate the employee either Unacceptable or higher using one or more levels of rating above that. Drafting a usable CE and its standard is your primary responsibility because nothing else works in a performance management program without that.

And there's the rub. I don't know about you, but for every good CE I have seen in my career, I've seen a hundred that were miserably bad. Even with all those pages and pages of guidance put out by OPM and your own agency, nailing an effective CE is just about the hardest thing a supervisor has to draft each year.

Well, you're in luck. Here at FELTG, we have devised a method for writing a power-packed, customized CE for every employee in government. It combines a fair amount of judgment with some hard lines in the sand for accountability. We can hardly wait to tell you about the FELTG-Method©, but first, you need to appreciate our bias:

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Performance appraisal doesn't work.

What? How can that be? Would Congress and OPM require federal agencies to spend millions of hours doing something that has not been proven to be an effective management tool? Yes, they would. As the lawyers say when something speaks for itself, *res ips*. The sad reality is that while annual performance ratings for employees sound like a good idea and are embedded in many organizations, you'll be hard-pressed to find any academic research that finds that they are worth the effort. In fact, what you'll find instead are studies that say that annual performance appraisals act to de-incentivize good performance. So, when we say we have a great way to write a CE, we're not saying that because it's a magic bullet to fix a non-functional performance appraisal program.

Instead, what we've done is come up with a terrific way to write a CE for the purpose for which they indeed are useful: to draw a line in the sand for employees either to keep their jobs or get fired. If you want something that helps you differentiate between *Exceptional, Superior, Exceeds Expectations, Outstanding,* or any of the other slices of acceptable performance, you'll need to look elsewhere. However, if you want a CE that you can use easily to make it clear to the employee what she has to do to keep her job, then this approach is for you.

Now that you have the background, look for the other two articles in this edition of the FELTG Newsletter and learn the secrets of a super-duper CE. Once you've mastered the FELTG-Method© trick, promise us you'll use your new powers only for good and not evil. Wiley@FELTG.com

COMING TO LAS VEGAS

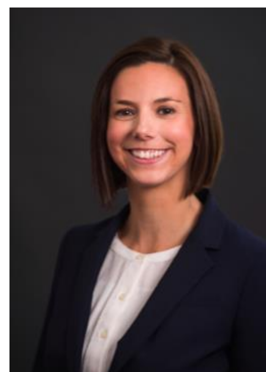
Developing & Defending Discipline: An Accountability Seminar
February 27 - March 1

Attention supervisors and advisors: join FELTG at the Tropicana Hotel in Las Vegas for a three-day seminar on taking defensible performance-and misconduct-based actions.

This newest program (and one of our most popular) is a must-attend if you have a challenge with even one federal employee in the workplace. From performance and conduct to leave abuse to whistleblower reprisal to defending against frivolous EEO complaints, we've got you covered.

Registration is still open but space is limited. Bill and Deb will see you there!

EEO Contact: No Mind Reading Required
By Meghan Droste



The federal sector process is made up of many steps with many deadlines. Complainants must do several things, most of which involve filling out forms, before their cases go to hearing before an EEOC administrative judge. Even one missed step can mean the end of a complaint. Perhaps the most important of these steps is making initial contact with the EEO office (or someone reasonably connected with it—a topic for another article) within 45 days of the last discriminatory event. It seems so simple from an agency's perspective—if the agency took the alleged discriminatory action

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more than 45 days before the complainant contacts an EEO counselor, it's all over for the complainant. Of course, it's not always that simple.

As the Commission reminds us most recently in *Shayne K. v. Department of Defense*, EEOC Appeal No. 0120180070 (January 4, 2018), the 45-day clock actually starts from when the complainant knew, or should have known, that the discriminatory act occurred. In examining these issues, the Commission applies a "reasonable suspicion" standard. This means that the 45-day time period does not start until the complainant reasonably suspects that he or she is the victim of discrimination.

This still seems pretty easy, right? In a non-selection case, for example, a complainant must contact a counselor within 45 days of learning that the agency selected another candidate. Well, not necessarily. The *Shayne K.* case is a good example of how that clock does not always start ticking right after the complainant becomes aware of the personnel action. The agency notified the complainant on February 16, 2017 that it had selected someone else for the position at issue. The agency did not, however, tell the complainant who it had selected. The complainant learned on June 20, 2017—through the results of a FOIA request he filed in February—that the selectee was outside of the complainant's protected class. The complainant then contacted an EEO counselor on June 26, 2017.

The Commission held that the complainant's EEO contact—130 days after he learned of the non-selection—was timely; because the complainant did not know the protected classes of the selectee until June, he could not have reasonably suspected that he was the victim of discrimination until then. The very act of the non-selection was not enough to trigger the deadline—there had to be some reason for the complainant to suspect that the agency did not select him for discriminatory reasons. Ultimately, the EEO process requires reasonable suspicion, not mind reading. Droste@FELTG.com

More on the Dangers of Charging Intent: Threat and Willful Misconduct

By Deborah Hopkins

Last month we discussed charges that carry an element of intent. If you didn't get a chance to read it, check it out here: https://feltg.com/the-dangers-of-charging-intent/. As a reminder, if a charge includes an element of intent, the intent must be proven by a preponderance of the evidence. Usually we don't have a confession showing intent, so we look at circumstantial evidence and consider the totality of the circumstances. *Naekel v. Transportation,* 782 F.2d 975, 978 (Fed. Cir. 1986)*; Boo v. DHS*, 122 MSPR 100 (2014).

This month we will be looking at two specific charges: threat and willful misconduct.

Threat

The lead case on threat is *Metz v. Department of the Treasury*, 780 F.2d 1001 (Fed. Cir. 1986). If you haven't read it, you really should. As a quick summary, though, Mr. Metz was an instructor at the Federal Law Enforcement Training Center, and he was not happy with his performance evaluation: he received an annual rating of "excellent" but believed he deserved an "outstanding," and he said he would harm himself and others. Two of Metz's coworkers also reported that they heard Metz say he was going to kill his supervisors.

Threats of harm against a government supervisor are taken seriously, though sometimes it is difficult for an agency to

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determine if a threat actually has been made, or if a person is just talking out of frustration or anger. In reviewing removals based on threat charges, MSPB must use "the connotation which a reasonable person would give to the words." *Meehan v. USPS,* 718 F.2d 1069, 1075 (Fed. Cir. 1983). In other words, look carefully at the circumstances.

Metz sets out five factors to help determine whether a threat has been made:

1. The listener's reaction;
2. The listener's apprehension of harm;
3. The speaker's intent;
4. Any conditional nature of the statements; and
5. The attendant circumstances.

Intent evidence shaky? Consider another charge for the misconduct. Discipline has been upheld for a charge of “Making statements that caused anxiety and disruption in the workplace,” *McCarty v. Navy*, 95 FMSR 5122 (1995), and charging “inappropriate conduct,” but bringing intent evidence into the *Douglas* analysis as justification of a more severe penalty, *Brough v. Commerce*, 119 MSPR 118 (2013).

Willful Misconduct

So, what the heck is this charge “willful misconduct”? It’s a deliberate and intentional (not careless or heedless) disobedience of a lawful order. So if you’ve got intent evidence that the disobedience was intentional, go forth and charge. However, as always when dealing with intent, proceed with caution.

The line between careless and willful should not be ignored. We often see employee injuries and workers’ compensation claims in cases of willful misconduct, and when an employee’s willful misconduct leads to his injury, his actions take him out of the performance of duty. *I.A. and USPS,* No. 15-1913 (ECAB 2016). For example, a USPS employee drove a GOV without a seatbelt and entered an intersection with the vehicle's passenger-side door open. These behaviors were not willful misconduct but rather were lapses of judgment, because they did not exhibit wanton or reckless disregard of probable injurious consequences. *L.R. and USPS,* No. 08-84 (ECAB 2008). Because there was no evidence of premeditation…or intentional wrongdoing, or that the employee knew his behavior was likely to result in serious injury, his claim was not precluded under workers’ comp. *Id.*

As we said last month, and will say a thousand more times, the bottom line in labeled charges that contain an intent element: be sure you have a preponderance of the evidence on intent, because if you don’t you will lose your whole case, and Mx Misconduct will be coming back to work for you. Hopkins@FELTG.com

Attention Attorneys and EEO Practitioners:

Join FELTG in Washington, DC, for a BRAND NEW writing class

Writing for the Win: Legal Writing in Federal Sector EEO Cases
May 8-10

Registration is open now for this limited-enrollment class. Guarantee your seat ASAP!

Surprise: We Start with the Position Description!
By William Wiley

When we think about writing a performance plan, we don’t usually start with the employee’s position description. We read goals and objectives passed down to us from higher up, often from people with important ideas and

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responsibilities, but have little to do with front line performance and accountability. For example, the US Office of Special Counsel just got a law passed that says that every federal supervisor has to have a CE that measures how much they support the employee's right to blow the whistle. The well-intended folks working on protecting employees from civil rights discrimination sometimes require a "diversity" CE. By the time we deal with special interest groups and generic CEs that say nothing, there's precious little room left for CEs that are customized to the employee and the work the employee needs to perform.

That's why we need to get to the heart of the employee's job as quickly and efficiently as possible. And the employee's job starts with the PD. So, get that document onto your computer, preferably in Word or editable PDF. Be sure its accurate or this won't work. If it's not accurate, stop right now and make it accurate. Your agency's classification office will be glad you did.

Step 1. Using the Position Description, list all significant tasks required to perform in the position.

This is easy if you know how to copy and paste. The Introductory section of a PD lists all the tasks that you expect the employee to perform; e.g., "Files all incoming correspondence," "Plans and manages the regional XYZ Program," "Serves as the agency's contact point with community partners," etc. Go through the first section and perhaps the Knowledge section of the PD sentence by sentence. If the sentence says nothing of importance and does not describe a task, skip it. If it does describe a task, but not an important one, skip that as well.

One of the good-news-secrets of a performance-based removal is that you will not have to defend your characterization of a task as important or not. If you say that it's important, it is. A judge will not go behind that decision and ask you to prove it or to otherwise justify your judgment.

When you come to a task that you deem to be important, using your word processing program, select the sentence with your little mouse, copy the sentence out of the PD document, then paste it into a separate document. Continue through the PD, copying and pasting, putting each new task on a separate line in the new document. When you finish, you will have a list of 10-50 important tasks you expect the employee to perform in that position. Using a sample PD from one of our favorite FELTG clients, your list should look something like this:

1. Provides access, as appropriate, to offshore energy and marine mineral resources.
2. Oversees the environmentally sound development of these resources.
3. Coordinates the review and analysis of offshore energy and marine mineral lease proposals.
4. Manages the Financial Accountability and Risk Management Program.
5. Administers lease adjudication and management functions.
6. Conducts environmental reviews, analyses, and consultations for proposed activities.
7. Etc.

Option: Legally, you can use the entire list to develop a single CE. However, in your judgment, maybe some of the tasks group well with certain other tasks, and for whatever reasons, you would like to have more than one CE. If so, copy and paste the tasks from the overall list derived from the PD into whatever groupings seem to make the most sense to you. For example, maybe some of the tasks are more administrative and others are more technical. Therefore, you might choose to have two CEs, one for each grouping. Here,

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we'll deal with just a single CE, for simplicity.

Step 2. Dig out your agency's handy-dandy appraisal form, the one you're required to use to develop the employee's annual Performance Plan.

Find a place on the form where you are allowed to create a CE. Give your CE a nice general name; something like "Technical Expectations" should work. Depending on your agency, you may be required to develop from two to five performance standards, one for each rating level in your agency's performance policy. Again, for the sake of simplicity, let's say that you are required to have three rating levels: *Outstanding*, *Successful,* and *Unacceptable.*

Go to the *Successful* level and begin to define the CE as follows: "Performs all of the following tasks within established time limits, consistent with accepted practices in the field, and free of any errors in the final product." Below this introductory characterization of your expectation, cut and paste the task list you developed from the PD.

Critical Element No. X: Technical Expectations

Successful - Performs all of the following tasks within established time limits, consistent with accepted practices in the field, and free of any errors in the final product.

1. Provides access, as appropriate, to offshore energy and marine mineral resources.
2. Oversees the environmentally sound development of these resources.
3. Coordinates the review and analysis of offshore energy and marine mineral lease proposals.
4. Manages the Financial Accountability and-Risk Management (FARM) Program.
5. Administers lease adjudication and management functions.
6. Conducts environmental reviews, analyses, and consultations for proposed activities.

"But, Bill, there's a lot of subjectivity here. Aren't employees entitled to know our specific expectations?" Yes, Virginia, they are. And we provide that subjectivity through the day-to-day feedback we provide employees as their supervisors. If we decide we must place the employee on a PIP, we will give this enlightening feedback through formal feedback sessions set up and documented weekly during the PIP. The language here is good enough to get the performance year rolling and can be built upon as necessary as the year develops.

Step 3. Define the other two levels of performance.

Outstanding - Performs all tasks as identified for the Fully Successful level, and in addition exhibits an overall degree of professionalism above that expected for the Fully Successful level.

Unacceptable - Performs any task in a manner inconsistent with the expectation set for the Fully Successful level, failing to perform one or more tasks at the *Successful* level.

There you have it. Room to rate above fully successful if you think that's necessary. A bright line in the sand if you PIP the employee. Remember, you don't have to prove that your standard is particularly reasonable, only that it was attainable and that you resolved any ambiguity in the standard by PIP counseling. Given that the level of proof necessary to uphold a performance removal is only substantial (more than a scintilla, but less than

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the weight of the evidence), you will not have a problem on appeal justifying a removal using this task standard. Now, get out there and hold somebody accountable. Wiley@FELTG.com

RETURNING IN 2018

Supervising Federal Employees: Important Tools for Managers and Advisers

FELTG proudly presents this 14-part series on supervising in the federal workplace. Join us for one session, or register for them all. Series discounts available.

March 6: Holding Employees Accountable for Performance and Conduct: The Foundation

March 20: Disciplining Employees for Misconduct, Part I

April 3: Disciplining Employees for Misconduct, Part II

April 17: Preparing an Unacceptable Performance Case

May 1: Dealing with Poor Performing Employees

May 15: Mentoring a Multigenerational Workforce

May 29: Tackling Leave Issues I

June 12: Tackling Leave Issues II

June 26: Writing Effective Performance Plans

July 10: Disability Accommodation

July 24: Intentional EEO Discrimination

August 7: Combating Against Hostile Work Environment Harassment Claims

August 21: EEO Reprisal: Handle It, Don't Fear It

September 4: Supervising in a Unionized Environment

Tips from the Other Side, Part 2
By Meghan Droste

Confession time—I'm a rule lover. Now, I don't just mean that I follow the rules; I mean that I really like when there are rules, I enjoy reading the rules, and I derive some not insignificant amount of joy from following the rules. I think this explains my love of baking (the recipe is just a list of rules that need to be followed) and etiquette books (I have a collection). Every Sunday morning, I start my day by reading The Ethicist column in *The New York Times Magazine* while eating a bagel. Judge if you want, but we all have our own quirks.

One of the reasons I like having rules is that they set out parameters and expectations. When I'm baking—whether it's a new recipe or one that I have made dozens of times—I know what ingredients I need and in what order to mix them, and I know what the outcome will be. Similarly, I know what I need to do as a litigator because there are often specific rules that set out the order of things to do and the deadlines for doing them. I follow the rules because I like to, but also because I know that if I don't follow them, there can be significant consequences.

I share all of this with you because it seems some agencies think that the rules can be bent just because it's hard to follow them. One of the rules that is so basic and yet so often ignored is the deadline to complete an investigation of a formal complaint. As you know, agencies have 180 days from the date a complainant files a formal complaint to complete an investigation *and* issue a Report of Investigation. This is in fact a deadline, not a suggestion. When I find that an agency has missed the 180-day deadline, I always file a motion for sanctions.

When reviewing a motion for sanctions, the Commission is unlikely to be moved by any excuses the agency might offer. Understaffed? You still have to follow the rules. *See Lomax v. Dep't of Veterans Affairs*, EEOC App. No.

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0720070039 (October 2, 2007) ("The agency's internal situation cannot be used as a defense to its failure to comply with the Commission's regulations."). In a budget crunch? You still have to follow the rules. *See Royal v. Dep't of Veterans Affairs*, EEOC Req. No. 0520080052 (September 25, 2009) ("[W]hen considering whether an agency has the fiscal resources to comply with the requirements of the EEO process, it is appropriate to look to the agency as a whole . . . the agency cannot expect to evade the consequences of its funding decisions."). Using a contractor? You still have to follow the rules. *See Adkins v. FDIC*, EEOC App. No. 0720080052 (January 13, 2012) ("Even when agencies contract with other organizations to conduct investigations, the agencies remain responsible for the content and timeliness of the investigations.").

The Commission has sanctioned agencies many, many times for the failure to meet this deadline. The severity of the sanctions can vary, but default judgment is common. Why risk the ultimate sanction—a finding that the agency discriminated against a complainant—when the rules are so clear? Make sure you hold the people in your agency accountable for timely completing investigations of EEO complaints. Trust me, it's fun to follow the rules.

If you have specific questions or topics you would like to see addressed in a future Tips from the Other Side column, email them to me: Droste@FELTG.com

But, What if I Want to Go Performance-Rating Crazy?

By William Wiley

Let's say that you've drunk the Kool-Aid and think that there just must be more than this to holding employees accountable for performance. You want not three levels of ratings, but five. Maybe some of your important tasks are more important than others. What if you're willing to be more forgiving of an employee, rather than requiring that he perform all the tasks in his position before you will fire him? Can you still use the FELTG Method©?

Sure, you can. You just have to do a little creative tweaking (not "creative twerking"; Deb always corrects me on that one).

More Than Three Levels of Rating.

Let's say that your agency requires five levels of rating: *Outstanding, Exceeds Successful, Successful, Minimally Successful, and Unacceptable.* In addition to the three levels defined above, you can define the two additional levels like this:

First, change the definition above for *Outstanding* to the definition for *Exceeds Successful*. Then add the new definition for Outstanding to be:

> *Outstanding* - Performs at the Exceeds Successful level, and in addition develops creative solutions for difficult challenges that arise during the appraisal period.

Then modify the Unacceptable level so that it comports with the Minimally Successful level like this:

> *Minimally Successful* - Performs any single task in a manner inconsistent with the expectation set for the Fully Successful level.
>
> *Unacceptable* - Performs two or more tasks in a manner inconsistent with the expectations set for the Fully Successful level.

A Desire to Distinguish Among Important Tasks

Let's say that after you review your list of important tasks, you conclude that although all

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of them are important, some are REALLY important; more important than the others. If you want to address this, it's easy. Just sort the tasks into two groups, like this:

Major Tasks

1. Provides access, as appropriate, to offshore energy and marine mineral resources.
2. Oversees the environmentally sound development of these resources.
3. Coordinates the review and analysis of offshore energy and marine mineral lease proposals.

Standard Tasks

1. Manages the Financial Accountability and-Risk Management Program.
2. Administers lease adjudication and management functions.
3. Conducts environmental reviews, analyses, and consultations for proposed activities.

Once that's done, you can make all sorts of decisions as to what you will accept as satisfactory performance. Perhaps you want the *Successful* level to be, "Performs all of the following Major Tasks within established time limits, consistent with accepted practices in the field, and free of any errors in the final product. Performs the following Standard Tasks within established time limits, consistent with accepted practices in the field, and free of any errors in the final product, with no more than two exceptions during the year." Maybe you decide that you want the *Unacceptable* – to be, "Performs any Major Task or three Standard Tasks in a manner inconsistent with the expectation set for the Fully Successful level." You can mix and match Major and Standard Tasks all day long until you get just the right combination of task failures to define your expectations.

Remember our bias here at FELTG. We don't see a lot of reason to get all wrapped up in distinguishing among the levels of performance above Unacceptable. Yes, there's a lot of judgment left to the supervisor in the above FELTG-Method©, but there is going to be a lot of judgment any time you rate an employee's performance (if you doubt that, watch the judging of the figure skating event at the Olympics). So, cut to the chase, focus on the demarcation between Unacceptable and whatever you call the performance level above that, and you'll be an Accountability Sheriff, protecting the federal workforce from shoddy performers and defending our way of life here in The Greatest Country in the World. Go get 'em. Wiley@FELTG.com

COMING TO ATLANTA

Mindset Matters: Effectively Managing and Communicating with Federal Employees
April 18-19

Are you dealing with:

- Difficult personality types?
- Setting workplace expectations?
- Communicating with people from different backgrounds and generations?
- Unmotivated workers?
- Having difficult conversations?

If so, then you'll want to join FELTG for this brand new program that focuses on the practical skills necessary to make managing and advising in the federal workplace an easier, and even enjoyable, task.

We'll see you there!

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