Federal Employment Law Training Group

Teaching the Law of the Federal Workplace

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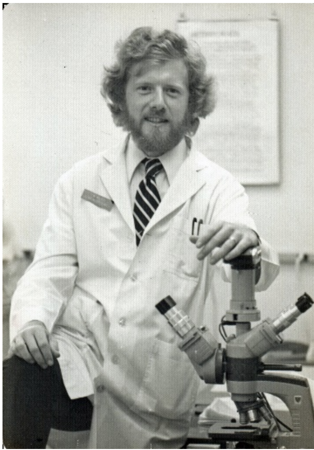

One day on a slow afternoon in my first job as the head of a labor & employee relations unit, I was sitting around the director's office with the head of classification. Somehow, we got to talking about life-before-human-resources; what had we been doing before we got into The Business. Amazingly, it turned out that the three of us at one time or another had previously worked in a morgue. My two colleagues had worked in funeral homes and I had been a pathology research technician in a science lab. Before we began working in HR, we had each spent our days with dead bodies, they preparing the body for burial and me dissecting the parts needed for medical research (I can still remove the inner ears from a cranium in less than 12 parsecs). Over the years, I came to realize the similarities between the two fields of work: dead bodies and labor and employee relations. Both require the practitioner sometimes to do nasty thing, things we can't talk about over dinner. Both require a high degree of mental acuity and a certain grounded-ness in practicality. And somedays after doing either, all we want to do is get home and take a bath. I've sometimes thought that part of the training to work in civil service law is that the initiate should participate in an autopsy. It really changes one's view of the petty minutiae and useless bureaucracy of existence if you've spent a little time with a body that a few hours before had been a living breathing person, just like you and me. OK, maybe not just like me because few have had a haircut as cool as the one I had in this picture. Come to our FELTG seminars. Learn The Business without having to wear a white lab coat.

Bill

FELTG TAKES TO THE ROAD …

Managing Federal Employee Accountability
William Wiley, Deborah Hopkins
December 3 – December 7, 2018
New Orleans

Advanced Employee Relations
Barbara Haga
February 12 – February 14, 2019
San Diego

Developing and Defending Discipline
Instructors TBD
February 26 – February 28, 2019
Oklahoma City

Workplace Investigations Week
Deborah Hopkins, Katherine Atkinson, Meghan Droste
May 13 – May 17, 2019
Denver

https://feltg.com/open-enrollment/

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Let's Address the Misconceptions About Poor Performance
By Deborah Hopkins

If there's one thing that bothers federal employees more than anything, it's slackers in the workplace. And if there's something even worse than that, it's the supervisors who refuse to deal with slackers in the workplace. I'm not making it up. Last month, OPM released a *Federal Employee Viewpoint Survey* that showed about 70% of federal employees do not believe that supervisors take the steps necessary to deal with poor performers. This isn't breaking news; some version of this concept remains one of the highest negative ratings measured each year.

In the federal government, only about 5% of the 10,000-plus removals annually are for poor performance; the rest are for misconduct. But did you know that it's almost always easier to remove a poor performer than it is to remove an employee who engages in misconduct?

> *But Deb, my HR office told me performance removals are really hard. They said I need months of performance tracking, then loads of evidence to start a PIP. Pus at my agency, we do 90-day PIPs, during which I have to double-check everything the employee does. Plus I have to give the employee a chance to get better every week. After all that, I need tons of evidence of all the failures during the PIP before I can even propose removal. I don't have that kind of time.*

Well, if all that were true I wouldn't have that kind of time either. But that entire statement is full of myths. Ready for me to make your day? Read on.

Performance-based actions DO NOT require months of performance tracking. In fact, as long as the employee has been on her performance plan for around 60 days (known as a warm-up period), you can put her on a PIP (Performance Improvement Plan) after only one or two instances of unacceptable performance on any critical element. You do not need a pattern of unacceptable performance, or a minimum number of mistakes. Read the performance plan and look at the standards for "Unacceptable" on each critical element. Depending on how the plan is written, one instance of unacceptable performance may be enough to trigger the PIP.

Here's an example:
Critical Element 1: Answers the telephone

- Performance Standards
  - Acceptable: Answers within three or fewer rings
  - Unacceptable: Answers after more than three rings

As soon as that employee answers the phone after 5 rings, you can PIP her. Boom.

Putting someone on a PIP does NOT require tons of evidence. Did you know the amount of proof you need to put someone on a PIP is so low that there's not even a name for it? At FELTG, we call it an *articulation* of the reason. So what does an articulation look like? "The employee answered the phone after five rings and the acceptable level is three rings or fewer." That's it. As a defensive strategy, we recommend making a note to yourself that day with what you observed, just in case down the road the employee challenges you on why you put her on the PIP; that contemporaneous documentation will be a helpful memory jogger and a solid piece of evidence for the judge or arbitrator to consider in addition to your testimony.

During the PIP you do NOT have to baby-sit your employee. The regulation requires you to "offer assistance" to the employee during the PIP. 5 CFR 432.104. Assistance is not doing the work for the employee, assigning a mentor, lowering the standard, or double-checking everything the employee does. We know from the case law that

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offering assistance means providing feedback to the employee during the course of the PIP. At FELTG, we recommend our legal clients meet once a week with the employee during the PIP, but the MSPB has found that even just one or two meetings during the course of a PIP meets the regulatory assistance requirement.

You do NOT have to give the employee a chance to improve during the PIP. The name "Performance Improvement Plan" is really a misnomer that has caused all kind of confusion. Back in the early '80s, OPM created the acronym "PIP" (first, Performance Improvement Period, then Performance Improvement Plan) in reference to the period mandated by law for a *demonstration of acceptable performance* prior to removal. It takes much less time for an employee to *demonstrate* whether he can do his job than to see if he can *improve* in doing his job.

President Trump's Executive Order, referenced above, clarifies what the law says by dropping the concept of an "improvement" period for poor performers and instead uses the legally correct term "demonstration" period. So while most agencies still call it a PIP, the more correct terminology would be Opportunity Period (OP), Demonstration Period (DP), or what our friends at HHS are calling the Opportunity to Demonstrate Acceptable Performance (ODAP).

The PIP does NOT have to be 90 days. FELTG recommends a 30-day PIP regardless of the employee's job type or GS level. Never, ever, ever in the history of the MSPB, even when former union attorneys were running the place, has the Board found a 30-day PIP to be too short. *Towne v. Air Force*, 2013 MSPB 81. If that's not enough for you, take a look at the President's May 25 Executive Order 13839, which says the performance demonstration period should "generally" be no more than 30 days. Why "generally"? Well, if your union contract requires 90 days, then you're stuck with 90.

However, it's perfectly legal to end a PIP early due to the error rate. See *Luscri v. Army*, 39 MSPR 482 (1989). For example, your employee is a security screener and the PIP says he cannot let any guns get onto an airplane, and on day 5 he lets a gun get onto an airplane. You can end the PIP there. Why on earth would you allow him 25 more days to let MORE guns onto planes? Which leads me to my next point.

Removal for failing a PIP does NOT require a high level of evidence. In fact, it requires less evidence than a misconduct removal. In performance, the level of evidence is called substantial. Substantial evidence is that which a reasonable person might accept [not *would* accept] to support a conclusion relevant in an unacceptable performance action – even though others may disagree. 5 CFR 1201.56(c)(1). So if you think the employee answered the phone on the fifth ring, that's enough. You don't need three witnesses, a customer complaint, and video evidence showing what she did. How about a squishy critical element like "Professional Conduct" that isn't quantifiable? If you think the person's performance is unacceptable as applied to the standard, even if another person might disagree with you, that's enough.

Contrary to what you might hear or read, I actually don't think the civil service system is broken and inefficient; it's just being used improperly. Streamline the process and you, too, can get a poor performer out of the workplace in 31 days. We've done it hundreds of times in the last 40 years and would be happy to show you how. Your other employees will thank you, and America will thank you too. Hopkins@FELTG.com

Don't miss our December 11 webinar *Aging and Cognition: The Graying of the Civil Service* presented by attorney Jennifer Johnson and psychiatrist George Woods.

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FELTG Modifies the No-Clean-Record Executive Order and OPM's Interpretative Guidance
By William Wiley

This is the final article of a three-part series.

As we have discussed previously, one of the Executive Orders (EOs) issued by the White House on May 25 effectively did away with an agency's ability to resolve an employee controversy by entering into a "clean record" settlement agreement. In a later article, we pointed out the deficiencies in OPM's "Interpretative Guidance" issued on October 10. OPM intended the guidance to clarify what the EO really means. Our conclusion is that the EO and the interpretation have problems when we try to apply them in a practical front-line situation. And who better to step into the breach and clean things up than little old FELTG.

First, to be perfectly clear: We love clean-record settlements. They are no-fault resolutions in which both sides concede something of value to the other. If they result in a future government employer hiring a formerly bad employee, that's their problem. There are a number of ways to address that issue without having to take away the flexibility of a clean-record settlement. With that said, if we were trying to implement what appears to be the desires of the White House relative to surfacing prior workplace problems of applicant former employees, here's what we'd say, in an EO or in interpretative guidance:

> To facilitate transparency relative to prior workplace problems job applicants might have had, agencies are to implement the following procedures immediately:
>
> 1. When an adverse action is proposed, the agency will open an adverse action file in the Office of Human Resources. That file is to contain the proposal notice with its attachments, the employee's response to the proposal, the relevant operative decision letter, a copy of any related appeal, grievance or complaint, and the documents resolving the appeal, grievance, or complaint.
> 2. These files on individual employees are to be retained by the agency for at least five years. There is no provision for destroying or altering these documents within this time period. Copies of the files are to be provided to any other federal agency with a need to know on request within seven days of the request.
> 3. OPM, as the administer of this provision, may request file copies at any time.

Bottom line: This approach satisfies the goal of the EO to provide real-time information to selecting officials about the government work history of a job applicant. It does not get all wrapped up with what's a "personnel record," or the good or not good reasons for altering the document. It allows an agency to honestly offer in settlement that all relevant documents will be removed from the employee's e-OPF. It even provides that the parties can enter into a settlement agreement, to be incorporated into the adverse action file, in which both management and the individual agree to a no-fault resolution of the matter.

The adverse action record is not thereby "clean," but it is annotated to show that the parties reached an agreement that the employee should be allowed to go forward with his federal career, albeit at another agency.

What the hiring agency decides to do with that information is up to that agency. At least this way, everything is transparent, above board, and honest. Wiley@FELTG.com

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What a Chicken Sacrifice Teaches Us About Religious Accommodation
By Deborah Hopkins

Let's say your agency is working on a remote project somewhere and there's a cargo plane that comes every two weeks to drop off supplies.

One of your employees asks you if the agency will allow a family member to bring a chicken to the airport at the point of origination, so the chicken can be flown, along with the rest of the cargo, on the next plane in. When you ask why, the employee tells you that she has a religious belief that requires a chicken sacrifice every fourth Friday, that her work on the remote project will still be in progress during the next required sacrifice, and she has no access to chickens in this remote place.

What do you do?

Hopefully, before you say anything about how strange you might think that is, or before you laugh the request off, you realize that this a request for religious accommodation and that the employee may be entitled to her request.

Here's what we know from the law. Title VII requires federal agencies to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause more than a minimal burden (undue hardship) on the agency's operations. This means an agency may be required to make reasonable adjustments to the work environment that will allow an employee to practice his or her religion.

Religion is broadly defined and includes all aspects of religious observance and practice, as well as beliefs – and not just the major world religions we might think of. According to 29 CFR§1605.1, a religion does not have to be practiced by an organized group and includes moral and ethical beliefs as to what is right and wrong that are sincerely held with strength of traditional religious views. It also includes beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that "seem illogical or unreasonable to others." *EEOC Compliance Manual*, Section 12-I, A-1.

The employee requesting religious accommodation has to do the following:

1. Demonstrate she has a *bona fide* religious belief or practice that conflicts with work requirement
   - "Every fourth Friday I am required to make a chicken sacrifice, and I am scheduled to be working on this remote project next Friday, and no chickens are around for me to sacrifice."
2. Inform the agency of conflict
   - The employee told the supervisor, and asked for a chicken to be allowed on the plane.
3. Show that the work requirement would force complainant to abandon fundamental aspect of belief or practice.
   - "These chicken sacrifices are a fundamental believe of my religion and if I don't make this sacrifice I will be out of good standing with my faith."

Now it's on the agency to accommodate the request unless doing so would cause an undue hardship. The term *undue hardship* is not defined the same way in religious accommodation cases as it is in disability accommodation cases. When it comes to undue hardship in religion, we are looking at anything more than a *de minimis* burden.

The EEOC Compliance Manual § 12-I, C-6, gives us more detail:

> To prove undue hardship, the employer will need to demonstrate *how much cost or disruption* the employee's proposed accommodation would involve. An employer cannot rely on potential or hypothetical hardship when faced with a religious obligation that conflicts with

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> scheduled work, but rather should rely on objective information … [A]n employer never has to accommodate expression of a religious belief in the workplace where such an accommodation could potentially constitute harassment of co-workers, because that would pose an undue hardship for the employer." (emphasis added).

So let's look at the request for the chicken to fly in on the cargo plane. Is it more than a *de minimis* burden for the chicken to ride in with the rest of the supplies, so the employee can perform her religious ritual on the day it's required? Take another look at the undue hardship determination and then decide that for yourself. After all, this newsletter is a place for training information, not legal advice. ☺ Hopkins@FELTG.com

Affirmative Defenses: The Sequel
By Meghan Droste

In April, I shared the Commission's decision in *Jenna P. v. Department of Veterans Affairs*, EEOC App. No. 0120150825 (Mar. 9, 2018), which addressed what happens when an agency fails to make a complainant whole after a report of harassment.

The complainant's first line supervisor sexually harassed her for several months, escalating from inappropriate comments to sharing sexually explicit videos he filmed with another agency employee. After her second line supervisor learned of the harassment, he took immediate action, including removing the harasser's supervisory duties, scheduling training, and initiating an investigation. Within two days the harasser resigned.

Although the agency took several key steps to address the harassment — and did so promptly — the Commission concluded that the agency was unable to establish its affirmative defenses because it failed to make the complainant whole when it did not restore her sick leave and pay the back pay for the leave without pay the complainant used as a result of the harassment. This decision is a good reminder of why it is so important to determine the full extent of the harm and then address it.

I thought the Commission's decision in *Jenna P.* was fairly straightforward and reasonable. However, the agency appears to have taken a different view because it filed a request for reconsideration. *Jenna P. v. Dep't of Veterans Affairs*, EEOC Req. No. 0520180337 (Aug. 2, 2018). In its request, the agency argued that it should not be liable for the harassment because the complainant took an unreasonably long time to report it, waiting more than seven months from the initial harassing conduct. The agency also questioned the finding that the complainant found the harassment unwelcome, arguing that she only seemed to object after her fiancé discovered the sexually explicit videos the supervisor sent to her. Finally, the agency argued that the Commission's decision did not fully address that the harm was flawed because the complainant did not request the restoration of her sick leave or request back pay for the leave without pay until well after the agency had initiated its response to the report of harassment.

When the Commission denies a request for reconsideration, it generally does so in a paragraph or two. It will usually remind the parties of the very limited circumstances in which it will grant such a request and then state the request does not fall within one of the categories. We get a bit more detail in *Jenna P.* The Commission reminds the agency that it knew, before it learned of the supervisor harassing the complainant, that the supervisor had an "unprofessional interest in his female coworkers." The Commission also relies on the complainant's probationary status and the "egregious" nature of the harassment to dispose of the agency's argument that she should have reported the harassment earlier. The fact

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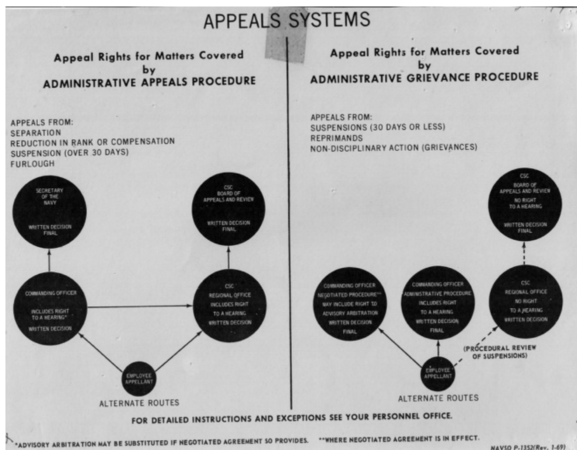
that the harassment increased in severity from complimenting the complainant's appearance to homemade pornography weighed heavily in the complainant's favor and made it reasonable and understandable that she did not report the harassment immediately.

The facts in this case — a supervisor who repeatedly harasses his subordinate, escalating from comments to sexually explicit material, while reminding her of the significant power imbalance between them and that he holds her job in his hands — unfortunately are not uncommon. I encourage you all to review the Commission's unusually detailed decision and consider it when addressing reports of harassment. Droste@FELTG.com

The (Good?) Old Days in Civil Service Law
By William Wiley

Hey, smart people! Guess what this is?



The photo above is of an "Appeals System" 9x12 card that I took off of a Navy bulletin board in the mid-70s. It shows the appeals processes available to federal civilian employees in 1969.

I thought you might like to know what it was like Back in the Day when old Bill Wiley started in this business. First, there are three major differences in how adverse actions were viewed back then:

- "Reduction in Rank" was just as appealable as was a monetary or grade demotion. Rank was given an extremely broad definition. If I was reassigned from supervising eight subordinates to only seven, here comes an appeal. Move my office from the top floor to the basement, my rank is starting to feel reduced again. Easy to see why Congress did away with this concept when it passed the Civil Service Reform Act of 1978 (CSRA).
- Today, to be entitled to a hearing challenging an adverse action, a suspension needs to be more than 14 days long. In 1969 and up to 1978, you got a hearing for a suspension only if it exceeded 30 days.
- Thanks to the CSRA, unionized civil servants today have a right to binding arbitration. This poster states in a footnote that even though arbitration may be invoked by employees in a collective bargaining unit, the result is only advisory to the agency.

And now, for the procedural choices. If the Navy reprimanded an employee or suspended him for 30 days or fewer, the employee had an appeal choice to make between two options:

1. A hearing before the Commanding Officer (CO) (facility head for other agencies) followed by a written decision, or
2. A procedural review for suspensions to a Civil Service Commission (CSC) regional office and then another procedural review by the CSC Board of Appeals and Review. Written decisions at both levels, but no hearings. CSC was the precursor oversight agency before MSPB took over in 1978.

If the Navy invoked a longer suspension, a reduction in rank or compensation, furloughed, or fired the employee, the

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employee had an appeal choice between two options:

1. In the Navy (with parallel procedures in other agencies), the employee had a right to a hearing before the CO, followed by a written decision. (Unionized employees could substitute arbitration at this step.) That decision could be appealed to the Secretary of the Navy, with no hearing, just a final written decision. As an alternative to the Secretary of the Navy's review, the employee could take the CO's decision to CSC, as below
2. As an alternative to the CO's review, above, or after the employee invoked the CO's review and received a decision, the employee could appeal to the CSC regional office where he would get a hearing and a written decision. Unlike the CSC review of shorter suspensions that were just on the procedures, these reviews were of the merits of the action. Either the employee or the agency could challenge the decision of the CSC regional office to the CSC Board of Appeals and Review. That review level did not provide for a hearing, but it did provide for a final written decision.

Compare these old appeals procedures to today's procedures provided for by the CSRA and you will see three huge philosophical shifts that occurred:

- **Binding arbitration!** Think about that. The federal government (aka, the king) was yielding its right to decide who worked for it and to award backpay and attorney fees to an unknown, untested, outside entity widely believed to benefit from setting aside disciplinary actions. For no other reason, if I were a federal employee, I would form or join a collective bargaining unit just to get this benefit.
- **Judicial review!** Not only was the power of the executive branch being diminished by the implementation of binding arbitration, the CSRA provided that final review of serious adverse actions was vested not with the President via the heads of the federal agencies, but with the courts. Unlike decisions being made within the executive branch, court decisions are not all that concerned about what makes for an effective government. Judicial decisions interpret the law. The negative practical effects of those legal decisions, the court leaves up to Congress to fix.
- **Representation!** Although some agencies allowed for representation in the appeals process in bygone times, the only alternative in which representation was guaranteed was in the advisory arbitration procedure. When appealing to the CSC, representatives were sometimes tolerated, although the appellant was given no explicit rights to representation. Under the CSRA, employees have statutory rights to be represented in any adverse action. With representation soon came discovery and trial-like administrative hearings, developments that have evolved too often into tools for the coercion of agencies.

These days, an agency has to not only decide to fire a bad employee, it must be ready to commit the legal resources and management time necessary to defend that decision. It's easy to see why some managers choose to avoid holding bad employees accountable through adverse actions given the high costs of defending those decisions, even when they are valid decisions for doing so.

So now you know what it used to be like. Good old days, bad old days … you get to decide. In comparison, we have the current days, built on the philosophical decisions made by Congress in 1978. Most importantly, though, we have the days yet to come. There's significant effort afoot to reduce the power of unions in the civil service. Congress has already made it easier

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to fire employees at the VA, and is considering language to expand that legislation to the entire executive branch. At least a couple of members of Congress would replace the federal civil service with about two million employees at will. (Can you say "patronage," boys and girls?)

It's good to remember the past. It's essential to know the present. It's historically vital to pay attention to what is happening in the future. Wiley@FELTG.com

Tips from the Other Side, Part 11
By Meghan Droste

Parties in EEO cases have to make many decisions throughout the process — from the complainant deciding at the outset whether to remain anonymous during the counseling period to the agency deciding whether to accept or reject an administrative judge's findings. One of the earliest decisions for an agency is whether to accept a complainant's claims for investigation. In my experience, the answer is usually yes. The agency will accept most, if not all, of the claims and the complaint moves forward. Sometimes, however, an agency will decide to dismiss an entire complaint at the beginning for failing to state a claim. While the EEOC's regulations require agencies to do so when appropriate, this decision has the potential to trip up an agency because it can lead to inappropriate weighing the merits of the complaint.

Two recent decisions from the Commission illustrate potential pitfalls in dismissing a complaint for failure to state a claim. In *Vickey S. v. U.S. Postal Service*, EEOC App. No. 012018055 (Aug. 15, 2018), the complainant asserted that she felt forced to resign when she experienced retaliation for speaking with a union steward, and when her supervisor slammed keys down in front of her, required her to drive in a vehicle with no heat, and threatened to remove her; the complainant alleged that all of these incidents occurred after she notified her supervisor that she was pregnant. The agency dismissed the claim, finding that the complainant was not aggrieved and the incidents were not sufficiently severe or pervasive. The Commission reversed, as it often does when an agency determines at such an early stage that a claim is not sufficiently severe or pervasive.

In *Mack R. v. Department of Agriculture*, EEOC App. No. 0120181607 (Aug. 3, 2018), the complainant alleged the agency discriminated against him when it issued a Letter of Warning (LOW) to him. The LOW included a statement that the agency would not place it in the complainant's official personnel file. As a result, the agency dismissed the complaint, finding that it did not state a claim because the complainant had not articulated a harm or loss. In its decision reversing the decision, the Commission noted that if the agency had reduced the LOW to a discussion and expunged the LOW from the complainant's record there would be no harm. As the agency did not do so, and the LOW still existed in the agency's files, albeit not in the complainant's OPF, the complainant could allege that he suffered a harm or loss.

While agencies certainly have an obligation to dismiss complaints that do not state a claim, such as claims that allege violations of laws that are not under the EEOC's jurisdiction, I recommend erring on the side of caution when the concern is not that the complaint could not possibly state a claim, and instead that it could not state a strong claim. Droste@FELTG.com

FELTG WEBINAR SERIES

Register now for our next webinar series *Too Sick to Work: Absence Due to Illness*. Over the course of three webinars, FELTG Senior Instructor Barbara Haga will cover sick leave abuse, medical documentation, FMLA, excessive absence and much more. Sign up for one, two or all three webinars.

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Take a Deep Breath … Relax: Stress and Mindfulness in the Workplace
By Dan Gephart

Is everybody stressed out at work, or does it just seem that way? Why is everybody so stressed? What can we do about this stress? Why do I keep asking questions about stress? Are all of these questions STRESSING you out?

We actually know why people are stressed in the workplace thanks to the American Institute of Stress. Workload issues (45%), people issues (28%), juggling work and family life (20%), and lack of job security (6%) are the leading reasons.

And we know that stress leads to increased workplace accidents, absenteeism, reduced productivity and even workplace violence, as FELTG President Bill Wiley discussed in a recent FELTG News Flash.

And with the holiday season in full swing starting next week, we're about to hit the most wonderfully stressful time of the year. What can we do to tame all this workplace stress?

I reached out to the amazing Phillis Morgan, founder of Resilient at Work. I was fortunate enough to edit a book on labor relations that Phillis wrote a few years ago. Phillis is a former federal labor and employment lawyer who worked with the departments of Homeland Security, Justice, and Defense, and with conflict-riddled environments in Afghanistan, Uganda, and Nepal. For her advisory work in Afghanistan, Phillis was awarded the NATO Service Medal, Secretary of Defense Medal for the Global War on Terrorism, and the Joint Civilian Service Achievement Award.

Earlier this year, she wrote an article on "Fierce Leadership" for a Federal Manager Association publication. I suggest you track it down.

DG: How does anxiety impact performance, particularly for federal managers?

PM: Anxiety and stress are of significant concern for American employees in general, and certainly for managers in the federal work space. Workplace stress and anxiety are related, multi-faceted issues that increasingly are of huge concern to employers and society at large. Anxiety has both a psychological and physical dimension. According to the American Psychological Association, anxiety is an emotion characterized by feelings of tension, worried thoughts and physical changes like increased blood pressure.

Stress is the emotional and physiological response to a trigger. In both cases, our perceptions of the external event make a big difference in whether we regard the event as anxiety or stress-inducing. Not all stress is "bad," and a healthy level of stress can contribute to optimum performance. For example, a manager can interpret a tight deadline as a positively motivating challenge, producing a healthy stress response. A new project where the learning curve is high can be interpreted as a positively stressful event or a negative one. Unfortunately, what managers and other employees are experiencing today, and have for some time, are critical and escalating levels of workplace stress.

DG: What suggestions do you have for managers and supervisors who are feeling overwhelmed?

PM: The research is clear that the most stressful type of work is that which values excessive demands and pressures that are not matched to workers' knowledge and abilities, where there is little opportunity to exercise any choice or control, and where there is little support from others. In fact, a gap between control versus demands is associated with increased rates of heart attack, hypertension and other disorders.

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The National Institute for Occupational Safety and Health (NIOSH) recommends that any serious stress reduction program include an effort to remove or reduce the sources of stress at work, such as job redesign or organizational changes, not just manage stress levels on an individual basis.

This view is consistent with the findings of Stanford professor Jeffrey Pfeffer in his latest book titled, "Dying for a Paycheck." Pfeffer's central argument in the book – like NIOSH's - is that employers need to focus more on those management practices that are leading to substantial health issues in the first place, practices such as layoffs, job insecurity, toxic cultures and long hours.

So, that's the place to start: Managers and supervisors should turn inward to examine the organizational and managerial policies and practices they have which may be contributing to the problem, and look for ways to redesign them. At the same time, managers and supervisors can take steps to manage their stress and improve their overall well-being. Here are some strategies that the research demonstrates are the most effective in combating stress and a sense of overwhelm:

Awareness. This includes increasing awareness of your stressful triggers and your responses to them. This is also known as mindfulness.

Reframing the problem or situation. What is the story you are telling yourself about the situation? Is it really a problem? Is it really as disastrous as the story you are spinning? Can you reframe it in a way that doesn't seem so overwhelming or intractable?

Task management. Can you delegate any part of the task? Can you break it down into more management chunks?

Exercise. It increases the production of endorphins, (your brain's feel-good neurotransmitters), improves mood, is relaxing, reduces the symptoms associated with mild depression and anxiety, and can improve sleep.

Meditation. Calming meditation practices such as sitting meditation, moving meditation, (yoga), or breathing exercises promote the body's relaxation response, groundedness, and resilience.

Get some support. Reach out to, and accept help from, trusted friends and family members. Contact the employee assistance program (EAP) for further guidance and counseling, and referral to mental health professionals, if needed.

DG: Mindfulness is not a widely accepted practice in the workplace. While that's changing, there are still a lot of people, including supervisors, who don't take the topic seriously. Do you still deal with negative bias about the term when doing training? And how do you deal with it?

PM: Many years ago when I first tried introducing mindfulness to workplaces, employers thought it was too *woo woo* and there was significant reluctance. There's been a sea change since then with mindfulness becoming much better accepted as a management and leadership strategy. A client who is a manager at one of the larger agencies suggested I start with the science behind how mindfulness works and that's what I do, and it really resonates with managers. I've been studying and working with these practices for 15 years so for me, personally, I like relating to the practices from a more intuitive or less heavily intellectual approach. Yet, I can understand that for someone who is unfamiliar with mindfulness, combined with perhaps the myths surrounding it, entering from a science gateway is more comfortable. It's really not a problem because the science is there, supporting what people have been experiencing as the benefits of mindfulness for thousands of years. However a manager or supervisor wants to orient to the subject, there is room. Gephart@FELTG.com

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