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

FELTG Newsletter Vol. XI, Issue 7 July 17, 2019

Open Offices (and Telework) Are Going the Way of the Dinosaur

Last week, I was reading an article in *Inc.* magazine about workplace fads that have come and gone. Apparently one fad that's on its way out is the open office concept. It turns out that having an open office actually *decreases* employee productivity and collaboration: the more open the office the less human interaction coworkers actually have with one another, and the more they rely on texting and instant messaging to communicate.

Another trend that seems to be on its way out, especially in the federal government, is telework. A number of agencies are drastically reducing the amount of telework employees are allowed to use, regardless of productivity, causing lots of kicking and screaming from employees and unions, as telework and flexible work schedules are one of the most powerful recruitment tools employers can use to woo new employees. It will be interesting to see how this all shakes out.

In the meantime, how about some summer reading? This month's newsletter has articles an accountability, marijuana use by federal employees, EEO deadlines, performance standards and reasonable accommodation, and more.

Take care,

Deborah J. Hopkins, FELTG President

UPCOMING OPEN ENROLLMENT TRAINING SESSIONS

Workplace Investigations Week
August 5-9
Denver, CO

Employee Relations Spotlight: Managing Attendance and Conduct
August 21-22
Boulder City, NV

MSPB Law Week
September 9-13
Washington, DC

Absence, Leave Abuse & Medical Issues Week
Washington, DC
September 23-27

Employee Relations Week
Washington, DC
September 30 – October 4

Legal Writing Week
October 7-11
Washington, DC

FLRA Law Week
October 21-25
Washington, DC

Just added due to popular demand!
MSPB & EEOC Hearing Practices Week
November 18-22
Washington, DC

We Don't Need Civil Service Reform, Part I
By Deborah Hopkins

Yes, you read that title correctly. Despite what you hear and read in the media and from politicians who don't know our business, *We Don't Need Civil Service Reform*. The system is not broken. We just need federal supervisors to use the tools the law has made available for the past 40 years. And we just need advisors to counsel the supervisors about how the system works, and to support them through the process.

Here are a few things it's important to know:

- Holding employees accountable is not as difficult as you think it is.
- Holding employees accountable is not as time-consuming as you think it is.
- Holding employees accountable does not take as much evidence as you think it does.

In a three-part series of articles this summer, I will explain each of the above statements in detail, starting with the first.

Holding employees accountable is not as difficult as you think it is.

In our FELTG training classes, we present the conduct and performance accountability tools in checklist order. The checklists are easy to follow, make it easy to confirm you have the evidence you need, and make it easy to verify that you aren't missing an important legal requirement and as a result jeopardizing your case. We spend time in our seminars going through each step, citing to relevant statutes, regulations, case law, and best practices, to be sure the process and requirements are absolutely clear, and to help ensure your case is defensible.

In **DISCIPLINE** cases, the checklist looks like this:

1. Is there a reasonable rule in place?
2. Did the employee have notice of the rule?
3. Do you have proof the employee violated the rule?
4. Can you defend your penalty?
5. Did you provide the employee due process?

Do NOT jump to step 4 and choose a penalty if you don't have steps 1-3 covered. If you do you will lose your case. It really IS that simple.

In **PERFORMANCE** cases, the checklist looks like this:

1. Has the employee been issued a performance plan with legally sufficient critical elements identified?
2. Has the employee been given a warm-up period to get used to the performance standards?
3. Can you articulate why the employee is performing at an unacceptable level on at least one critical element?
4. Did you give the employee an opportunity to demonstrate acceptable performance?
5. Did you provide the employee legally-required assistance during the demonstration period?
6. Do you have documentation the employee did not perform acceptably during the demonstration period?
7. If the employee was not successful during the demonstration period, did you provide the employee due process?

Same thing here, don't jump to step 4 and initiate a demonstration period (what we used to call a PIP) if you haven't met the requirements of steps 1-3 first. If you do you will lose your case. It really IS that simple.

Let me say it again. *It really is that simple*.

You'll have to come to our classes to get the full details on how to implement these checklists, and what is required for each step, but I promise it will be well worth your time. Do not believe what you read or hear in the media about how it is too difficult to deal with problem employees. Do not buy into the idea that civil service protections need to be stripped away to make the government a more efficient place. Do not look at the one case where a bad employee got her job back because of a procedural issue and think that you have no chance of getting your own action to stick; if you are on the management side, the odds are strongly in your favor that you will win your case.

Join us next time for Part II, where we discuss how holding employees accountable is not as time-consuming as you think it is. In fact, if you've got a problem employee, there's a good chance you can have them off your payroll before the end of the summer. Stay tuned. Hopkins@FELTG.com

Developing & Defending Discipline

Holding federal employees accountable for performance and conduct is much easier than you might think. Too many supervisors believe that an employee's protected activity (EEO complaints, whistleblower disclosures, or union activities) precludes the supervisor from initiating a suspension or removal. But that's not true.

This three-day FELTG class is here to make your life easier by clarifying those misconceptions while helping you to take actions quickly and fairly – actions that will withstand scrutiny on appeal by the MSPB, EEOC, or grievance arbitration.

Join us for upcoming training in Atlanta, GA (**September 17-19**), or San Juan, Puerto Rico (**February 25-27, 2020**).

Register now for Early Bird pricing.

The Good News
It's Perfectly Legal to Talk to Your Employees -- and it Can Net Results!
By Ann Boehm

Our friends at the Merit Systems Protection Board (MSPB) Office of Policy and Evaluation recently released a research brief called *Remedying Unacceptable Performance in the Federal Civil Service*. It's nice to know the MSPB is functioning, even without any Board members (yep, we are still waiting on Senate confirmation of the President's three Board nominees).

The brief's top recommendation for handling poor performance is to "hire the right people." Gee, thanks for that advice. Just in case your crystal ball isn't always working properly and you aren't always able to hire the right people, here's the big takeaway from the rest of the research brief (and based on my own years of experience): Talking to employees works.

In case you feel like you've tried everything with problem employees, don't despair. You're not alone. Apparently, three fourths of the supervisors surveyed reported taking ***10 (!)*** different approaches to deal with poor-performing employees. "Houston, we have a problem." (OK, I know that's a movie quote and not the historically accurate statement. You get my point.) Supervisors need to figure out a more efficient way to handle poor performers.

The brief states "supervisory support has a relationship to the quality of an employee's performance, with the most supportive supervisors tending to have the best performers." Easy enough.

Here's what you have to do to be supportive – talk to your employees (are you catching on to my theme?) And it's perfectly legal to

do so. Believe it or not, at a training session I recently conducted, supervisors had been instructed by human resources professionals ***not*** to talk to their employees about performance. They were told it could lead to litigation. Um, so can getting a scalding cup of coffee at the McDonald's drive through, potentially. That's just lame and incorrect advice!

If you aren't sold yet, read this line from a footnote in the MSPB research brief. "Employees who agreed that they feel comfortable talking to their supervisors about doing the things that matter to them at work and that their supervisor supports their need to balance work and family were more likely than others to report: (1) engaging in strong performance behaviors; and (2) that their performance had been rated at the highest level in their appraisal system."

That's so powerful, you may want to reread it!

Here are some other things that the brief found effective: monitoring the employee's work by providing feedback and coaching; communicating; providing guidance on expectations; and discussing possible negative consequences. On this last point – discussing possible negative consequences – I can already hear the lawyers advising, "Don't do that. They may sue you." Oh, please. It's not illegal to tell an employee he or she has to do the job correctly or he/she could lose it. In fact, you owe it to the employee. According to the folks at the MSPB, it works.

My friends, I know you're busy people. I know you don't get paid extra for being supervisors. But help yourselves and your organizations. Take the time to talk to your employees – the good ones ***and***, more importantly, the struggling ones. It's legal. It's effective.

Let me know if you have any success or new insights. You could end up in *The Good News*! Boehm@FELTG.com

Performance Standards and Reasonable Accommodation
By Barbara Haga

I do a lot of training with managers on performance management and performance appraisal system requirements. That includes discussions of performance failures and how to hold employees accountable. It seems that many don't have a good grasp of the difference between a reasonable accommodation and an unreasonable one. When I talk about lowering performance standards not being a reasonable accommodation, they seem to be surprised by that.

The scary part of this is that based on what I see in classes, managers may be doing this informally in many situations without ever raising a question to the appropriate EEO/HR/Legal staff as to whether it is required. If you sampled performance narratives, I think you will find things such as "For this rating period, the employee was not required to meet the standard of 19 widgets a month, but was required to make 12" or "The employee's assignments were limited to one portion of the process for this rating period," or "The employee's assignments included only XXX types of cases for this rating period." These are all indications that someone is adjusting requirements for some reason. The next step should be talking with the manager to find out what the reason was – and whether a question regarding reasonable accommodation is part of it.

What needs to happen to make sure managers can distinguish between when they are required to accommodate and when they are not? Education would be the obvious answer. That could include incorporating this kind of information into performance training, or it could be as

simple as a short briefing included as part of a staff meeting for managers.

The EEOC's guidance on applying performance and conduct standards to employees with disabilities is a helpful place to start. It is entitled *The Americans With Disabilities Act: Applying Performance And Conduct Standards To Employees With Disabilities*. The document includes numerous scenarios regarding when accommodation is required that cover private, state and local government, and Federal employees. Kudos to the EEOC for keeping the document updated and posting the date of the last revision. (Certainly would be nice if OPM adopted that practice for their fact sheets and other guidance documents they have posted, but I digress).

What important points did the EEOC make? (Section III.a)

> *1) An employer should apply the same quantitative and qualitative requirements for performance of essential functions to an employee with a disability that it applies to employees without disabilities.*

Lowering production standards or eliminating requirements for essential functions is not required as an accommodation. The point of accommodation is to remedy the situation so that the disabled employee can perform at the same level as any other employees in the job. Eliminating essential functions, of course is not a reasonable accommodation, but taking out marginal functions *is* a possible accommodation.

The first example provided in the guidance is that of a Federal employee who cannot meet a performance standard:

> *Example 1: A federal agency requires all of its investigators to complete 30 investigations per year in addition to other responsibilities. Jody's disability is worsening, causing her increased difficulty in completing 30 investigations while also conducting training and writing articles for a newsletter. Jody tells her supervisor about her disability and requests that she be allowed to eliminate the marginal functions of her job so that she can focus on performing investigations. After determining that conducting trainings and writing articles are marginal functions for Jody and that no undue hardship exists, the agency reassigns Jody's marginal functions as a reasonable accommodation.*

In this example, the agency was able to accommodate the situation because the essential function could be performed at the required level by allowing use of time that would have been spent on the marginal tasks. However, if there wasn't significant additional time that could be gleaned from other assignments or Jody was not able to complete the number of investigations required for medical reasons, or if those trainings/articles were deemed essential, she would not have been entitled to this accommodation.

The second example covers additional work requirements beyond what the employee is presently required to do. This scenario involves a private sector employee, but I am sure we have all encountered situations where new requirements were added to positions. (Look at the article I wrote in March on conditions of employment related to a computer specialist who had to meet new certification requirements.)

> *Example 2: Robert is a sales associate for a pharmaceutical company. His territory covers a 3-state region and he must travel to each state three times a year. Due to staff cutbacks, the company is increasing the number of states for each salesperson from three to*

five. Robert explains to his manager that due to his disability he cannot handle the extra two states and the increased traveling, and he asks that he be allowed to have responsibility only for his original three states. The company may refuse this request for accommodation because it conflicts with the new production standard. However, the company should explore with Robert whether there is any reasonable accommodation that could enable him to service five states, and if not, whether reassignment is possible.

I think many managers might feel in this situation that it would be a legitimate decision not to require Robert to perform over the same area as other employees because of his disability, when the answer is actually quite different.

The third example involves a computer specialist and a PIP.

Example 3: A computer programmer with a known disability has missed deadlines for projects, necessitating that other employees finish his work. Further, the employee has not kept abreast of changes in the database package, causing him to misinterpret as system problems changes that he should have known about. The employee is placed on a Performance Improvement Plan, but his performance does not improve and he is terminated. At no time does the employee request a reasonable accommodation (i.e., inform the employer that he requires an adjustment or change as a result of a medical condition). The termination is justified as long as the employer holds the employee to the same performance standards as other programmers.

In this example, management took the appropriate step to place the employee in the demonstration period because the work was not being accomplished at the required level, even though they knew the employee had a disability. I believe that there are likely many situations where management would accept the less than acceptable work because they felt they had no alternative but to do so.

The current administration has sent lots of signals about the need for accountability in performance management. Based on what I have seen, this is an area where managers need some help to ensure that accountability is maintained appropriately. Haga@FELTG.com

Upcoming FELTG Webinars

Sex Discrimination, Gender Identity, and LGBTQ Protections in the Federal Workplace
Meghan Droste
September 5, 2019

Why the Douglas Factors Are Your Friend
Ann Boehm
September 12, 2019

Suicidal Employees in the Federal Workplace: Your Actions Can Save a Life
Shana Palmieri
September 26, 2019

Dealing with Unacceptable Performance: Fast and Effective Accountability Tools for Agencies
Deborah Hopkins
October 3, 2019

Discipline Alternatives: Thinking Outside the Adverse Action
Ann Boehm
October 24, 2019

Register for FELTG's **All-Access Quarterly Webinar Pass** or the **Webinar All-Access Pass.**

'Summertime, and the livin' is easy' – A Brief Reminder on EEO Deadlines
By Meghan Droste

Happy summer dear FELTG readers! By the time you read this, we will be firmly in the middle of July and, if you are in an area like DC, in the midst of plenty of heat and humidity. It's the perfect time to take it easy, find some shade, and maybe indulge in a frozen treat or two. (I leave it to you to decide what form those treats will take. Personally, I'm sticking with some coffee cookie ice cream).

In the spirit of the lazy days of summer, I'm bringing you a pretty straight forward case that won't require too much thought to digest. In *Leisa C. v. Department of Agriculture*, EEOC App. No. 2019001265 (April 3, 2019), the agency issued a Notice of Proposed Removal to the complainant on February 2, 2018. Four months later, on June 20, 2018, the agency issued a decision on the proposal, removing the complainant effective June 23, 2018. The complainant received the decision letter on June 27, 2018, and she contacted an EEO counselor on July 16, 2018. The agency subsequently dismissed the complaint, finding the complainant contacted a counselor beyond the 45-day deadline.

If you are currently scratching your head, you're not alone. I was a bit surprised when I read this one too. The complainant contacted a counselor less than a month after she received the decision, and only 23 days after the effective date of the removal. I am terrible at math, but it's pretty clear even to me that 23 is less than 45, so there is no question that the complainant's contact was timely. See, I told you this one would be pretty straight forward. No heavy lifting required.

The Commission didn't offer any detail on the agency's argument, but my best guess is that it based the deadline on the February 2, 2018 notice proposing the complainant's removal (164 days before the complainant made EEO contact). If this was the theory of the agency's case, it unfortunately doesn't float. As the Supreme Court has said, "[t]he claim accrues when the employee is fired," and not a moment before. *See Green v. Brennan*, 136 S. Ct. 1769, 1777 (2016).

And with that, I leave you all to find a pool to float in or a hammock to nap in; just be sure to wear lots of sunscreen.
Droste@FELTG.com

Tips from the Other Side: July 2019
Meghan Droste

When I'm not litigating my own cases, I spend most of my work-related time out there teaching, bringing you case law and pointers to help in your own practice. Last month, I had the pleasure of being the student instead of the teacher, and I picked up a bunch of new and exciting info at a conference for employment lawyers. One of the panels I attended brought my attention to an EEOC decision from last year, *Joseph B. v. Department of Veterans Affairs*, EEOC App. No. 0120180746 (August 14, 2018), that is remarkable for the award of several years of front pay. Front pay is unusual and years of front pay is nearly unheard of. But that's not the only takeaway from this decision, so this month's tip comes from the procedural issues that led to the case being in front of OFO.

In *Joseph B.*, the complainant filed a motion for summary judgment and the agency stipulated to liability in nearly all areas of the complaint. After reviewing the pleadings, the administrative judge granted the complainant's motion and entered summary judgment in his favor. The administrative judge subsequently conducted a hearing on damages and issued a decision ordering several types of relief. As part of the order, the administrative judge ordered that the complainant "continue to receive full

benefits in front pay status, including health insurance." The agency fully implemented the administrative judge's decision with some modifications to the language. It included in the final order a direction that, to receive the front pay, the complainant had to resign from his position. The agency did not file an appeal of the administrative judge's decision.

The agency paid the complainant his salary and related benefits for more than a year after the final order, although the complainant did not resign. Fifteen months after the order, the agency separated the complainant from federal service and stopped paying the ordered relief. Instead, the agency asserted that it would pay the complainant a lump sum of the front pay owed, with an offset for the salary he was earning from his part-time employment (which the complainant had engaged in while working for the agency with the agency's knowledge and approval). The complainant filed a petition for enforcement with the Commission.

All of this brings us to the tip for this month: If an agency is going to take issue with an administrative judge's award, it must file an appeal. The agency did not do so, and instead issued a final order stating that it would fully implement the administrative judge's decision. As a result, the Commission found that it could not modify the order and pay the complainant a lump sum — which would not allow the complainant to continue to receive the "full benefits," including health insurance, provided for in the order — rather than keep him on the rolls in a non-duty status. The Commission also rejected the agency's arguments regarding the complainant's other income, and held that front pay is not subject to mitigation.

I recommend thinking of these final orders like a settlement agreement. While you might come to regret it later, once you agree to it (or fully implement it without appealing), you're stuck with it. Droste@FELTG.com

More Questions about Federal Employees Who Use Marijuana
By Deborah Hopkins

As marijuana is legalized in more states around the U.S., the questions FELTG receives regarding marijuana use by federal employees continue to come in. (If you haven't already, check out my first article on the topic, *Can Federal Employees Smoke Pot?*) Below are some recent questions sent to the FELTG question desk, and along with each answer comes the disclaimer that this article is not intended to provide legal advice, is for training purposes only, and does not create an attorney-client relationship with any of the questioners.

Question 1:

Hello and good afternoon,

> *I have a question about the use of marijuana by federal employees. Since its use has been cleared in Canada for all who are 18 and over, can a federal employee with the U.S. be charged for just using it there? Upon returning to work, even days after using, he/she may not pass a drug test. Technically, a federal employee in Canada is subject to Canada laws and not those of the United States, correct?*
>
> *Thanks and look forward to your response,*
> *[Name Redacted]*

And our FELTG-response:

Well, that's a creative way to look at things, but you won't like my answer. Don't make the mistake of thinking that because an activity is legal in a certain jurisdiction, that activity can't be considered misconduct for the purposes of federal employee discipline. For example, in over 40 countries around the world domestic violence is legal. But if a federal employee happens to work for the State Department in Armenia, which is one

of the countries that does not see domestic violence as a crime or civil infraction, that employee can still be disciplined for physically assaulting her spouse, if the agency can find a nexus between the conduct and the federal job.

Of course, we don't even need to look at such an extreme example. Take a read of what then-OPM Director Archuleta put in a 2015 memo to agency heads, which is still true today:

> Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substance Act. Thus knowing or intentional marijuana possession is illegal, even if an individual has no intent to manufacture, distribute, or dispense marijuana. In addition, Executive Order 12564, Drug-Free Federal Workplace, mandates that (a) Federal employees are required to refrain from the use of illegal drugs; (b) the use of illegal drugs by Federal employees, whether on or off duty, is contrary to the efficiency of the service; and (c) persons who use illegal drugs are not suitable for Federal employment. The Executive Order emphasizes, however, that discipline is not required for employees who voluntarily seek counseling or rehabilitation and thereafter refrain from using illegal drugs … Drug involvement can raise questions about an individual's reliability, judgment, and trustworthiness or ability or willingness to comply with laws, rules, and regulations, thus indicating his or her employment might not promote the efficiency or protect the integrity of the service.

So even if marijuana is legal in a jurisdiction (Canada, or elsewhere), it is illegal for a federal employee to use marijuana in any form – smoke, edibles, tinctures, pens, etc. – at any time, if they are employed by a federal agency. If you fail a drug test, you can probably kiss your job goodbye, even if the drug was legal where you used it. In fact, in one of the last MSPB decisions we ever got, all the way back in December 2016, the MSPB affirmed an indefinite suspension for an employee who used marijuana and whose security clearance was under review. *Palafox v. Navy*, 2016 MSPB 43 (December 20, 2016).

Bottom line: The federal government takes marijuana use seriously. If you want to keep your job, don't use it anywhere, anyhow.

Question 2:

> *Hello, I am starting a position with the [agency redacted] soon as a [job title redacted]. I've used marijuana prior to this position and am thinking of continuing to do so while there. What should I take into consideration while making this decision, and what consequences can I face if I fail a drug test? The position is very low level, barely a step above intern, for context.*

Thanks for the hypothetical question. Federal employees may not legally use marijuana in any form, whether recreational or medicinal. If they do, they can be removed, either for misconduct or for suitability reasons. And if you're a probationer, you won't even get to the conduct or suitability question – you'll just be out. You need to realize the risk you are taking if you choose to violate this federal statute.

While job level and type is a Douglas factor, when the misconduct violates a federal statute, the weight of the offense carries far more significance than the level of job you hold.

(By the way, probationers don't even get the benefit of a Douglas-justification in removals for marijuana use.)

Question 3:

> *Can you work for the federal government and still use medical marijuana?*

Sure you can. Until you get caught, that is, and then you can be removed because it is illegal to use marijuana while you are a federal employee.

No matter how many different ways you ask the question, my answer is going to be the same. Unless and until Congress passes a law that says marijuana is not illegal, federal employees should just say no. Hopkins@FELTG.com

Are They Going to Regret Leaving?
By Dan Gephart

It was 24 years ago this month, and I vividly remember that heart-pounding march from the desk I shared with a fellow reporter to the Editor's office. The newsroom boss -- we'll call him X – was very talented. He was even more intimidating. And I was about to, for the first time in my professional career, tell my boss I was resigning.

At first, X offered the usual -- a slight raise and a few minor perks. I felt flattered and appreciated. Once I made it clear that my decision was final, however, the mood abruptly turned sour. X looked me directly in the eye and ominously said: "You're going to regret leaving the newspaper business."

X scared the heck out of me.

In hindsight, though, X's threat was pretty ridiculous. That small suburban newsroom never had as many employees as it did on the day I resigned. It now has fewer than half. In the mid-90s, the newspaper business began a slow steady decline that has accelerated in the last few years. About 3,000 newspaper employees have been laid off or offered buyouts within the first five months of this year, according to Bloomberg.

I share this experience so that I can ask you this question: If a highly productive young employee came into your office to give her two weeks' notice, would you feel confident enough to reply: "You're going to regret leaving the federal government"?

We're in trouble, folks. There are more than twice as many federal employees 60 years and older than there are federal employees under 30 years old, according to FedScope data. That retirement tsunami never really hit, but darn if those big waves don't keep lapping up on our shore. We need to bring in young talent to continue our agencies' very important missions, many of which are at critical junctures. Yet, those agencies still haven't figured out how to consistently hire young federal employees. There is also good reason to believe that they're losing the ones they were able to hire.

The FedScope data is based on information as of September of 2018. It's reasonable to think those figures will continue to get worse. Just look at what has happened since last September:

- A highly politicized and soul-crushing 35-day shutdown that fell over the end-of-year holidays.
- Multiple announcements from agencies planning to scale back their telework programs.
- A member-less Merit Systems Protection Board. (And remember: The Board has lacked the quorum necessary to make decisions on cases for more than two years, leaving thousands of employees and their agencies in employment limbo.)
- A proposal to dismantle the Office of Personnel Management, the agency responsible for federal

workplace policy. (If you'd like a more positive take on OPM's potential demise, my colleague Ann Boehm found a silver lining.)
- Bills to extend probationary periods.
- Proposed legislation that would basically make federal employees at-will, returning civil service to the spoils system.

The federal government is not looking like an ideal place to work.

What does this have to do with you, FELTG reader? A lot. As federal leaders, supervisors, HR professionals, and EEO specialists, you either manage people yourself or advise those who do.

Look at any survey of why people leave jobs and you'll see poor performance management at the core. They may say "bad manager," but it's the same thing. Nothing drives a good performer to frustration more quickly than seeing a poor performer skating by. I know. I've watched it happen quite often in previous jobs. But don't trust me. Just read any Federal Employee Viewpoint Survey over the last several years. There are way too many federal employees who think their managers are not holding bad employees accountable.

Behind those draconian bills in Congress and the wariness of young, talented job-seekers is the biggest and most damaging myth about federal employees: They can't be fired. And there isn't one iota of truth to that.

Are you one of those managers who cowers at the thought of accountability? Do you advise one of those managers? Well, you better learn how to hold employees accountable or get out of the way.

Anyone who has attended FELTG's signature program *UnCivil Servant: Holding Employees Accountable for Performance and Conduct* or read the book (now in its 5th edition) can tell you how to remove an employee for unacceptable performance in 31 days. If you haven't attended the training, scroll back and re-read the article by FELTG President Deborah Hopkins that leads off this month's newsletter -- *We Don't Need Civil Service Reform*. Deb gives you the simple steps to address poor performance and misconduct. It doesn't get any easier. Print the article, and be on the lookout this summer for the next two installments in Deb's series. If you still need inspiration, then scroll back to the article – Ann Boehm's Good News feature *It's Perfectly Legal to Talk to Your Employees -- and it Can Net Results!* There is a lot of wisdom in those two articles.

You should also find a way to get to our Managing Federal Employee Accountability next week in Portland, Ore., Barbara Haga's Advanced Employee Relations class in Norfolk, Va., from September 10-12, or the three-day Developing and Defending Discipline: Holding Federal Employees Accountable, starting September 17 in Atlanta. You'll leave each class with a lot of specific guidance on how to handle the accountability challenge.

Look, it can be done. Wouldn't it be nice to hire and keep good talent? While we never want our talented employees to leave, wouldn't it be great to be able to say to the departing worker, with a straight face: "You're going to regret leaving the federal government." Gephart@FELTG.com

Webinar Series Tackles Every Aspect of Reasonable Accommodation

FELTG proudly presents the five-part webinar series **Reasonable Accommodation in the Federal Workplace** with presenters, attorneys Deborah Hopkins, Katherine Atkinson, Ann Boehm, and Dwight Lewis. The first webinar takes place this week (July 18). Get more information and register **here**.