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

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Halfway Around the U.S. By the End of the Summer

Can you believe how quickly the end of summer is approaching? In many parts of the country, kids are back in school, college semesters are starting, and people are taking their remaining vacations before September arrives and it's back to business.

Last week, I was on a flight to Las Vegas, where I was headed to train one of my favorite agencies. The wifi on the plane wasn't working, so I made good use of my time and counted up all the states FELTG has been in 2019. For a company that started 19 years ago with one two-day class organized on the back of a cocktail napkin, I'm amazed (and proud) that this year our instructors have been to 22 states and the District of Columbia, and there are several more remaining, including Advanced Employee Relations in New Orleans, LA. The farthest states we've traveled to are Alaska and Hawaii, and the places we've been to the most are (unsurprisingly) Washington, DC, and Virginia.

If you want to get a jump on next year, FELTG is heading to San Juan, Puerto Rico, for the first time ever in February. Thanks for joining us, whether from home or somewhere far away. We wouldn't be who we are without you.

Take care,

Deborah J. Hopkins, FELTG President

UPCOMING OPEN ENROLLMENT TRAINING SESSIONS

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

MSPB & EEOC Hearing Practices Week
November 18-22
Washington, DC

Advanced Employee Relations
November 19-21
New Orleans

See all upcoming enrollment classes at https://feltg.com/open-enrollment/.

Can an Agency Track Down a Former Employee and Discipline Him?
By William Wiley and Deborah Hopkins

This hypothetical recently came across the FELTG Help Desk, and we thought it was a curious question that the rest of our readers might be interested in. It's a multi-part scenario, so read carefully.

1. **Can a misconduct investigation at an employee's old agency follow him to or otherwise impact him at a new agency where he has gotten a new job?**

Answer 1. As long as the agency can find a nexus (a connection) between the previous misconduct and the current government job, then an investigation (and its ensuing findings) from another agency may follow the employee to the new job. The impact can include anything from nothing through removal, depending on how the new agency views the conduct.

The investigation stays with the employee because the employee is accused of engaging in misconduct directed against the government, which is not limited to just the former agency. Or, perhaps he's committed a criminal act (against the American people). Either way, moving from one agency to another does not relieve him of accountability.

2. **If it is a low-level offense (far from criminal), can the old agency mandate the employee back to be interviewed, and reach them at their new agency to receive the proposal and decision letters? Or does the new agency somehow take on the case?**

Answer 2. The former agency can absolutely request the employee to come back for an interview, and the new agency's supervisor can mandate the employee comply with the interview request or else face disciplinary action. And just so you know, refusal to cooperate with an agency investigation is first-offense removal misconduct, no matter how serious or minor the misconduct allegations might be. *See, e.g., Hamilton v. DHS,* 2012 MSPB 19, *Weston v. HUD,* 724 F.2d 943 (Fed. Cir. 1983); *Negron v. DoJ,* 95 MSPR 561 (2004); *Sher v. VA,* 488 F.3d 489 (1st Cir. 2007).

Keep in mind, even though the employee has left, there's this little piece of the *Administrative Leave Act of 2016* (part of the 2017 NDAA) dealing with investigative leave that says if an employee quits during an investigation, the formerly employing agency should complete its investigation, then forward any adverse conclusions to the new agency for inclusion in the employee's OPF. The former agency will have to notify the employee and then deal with any appeal, and as far as we can tell this issue has never been litigated.

When it comes to imposing discipline, however, that decision must be made by the new agency.

The employee now works at X agency, so he is controlled by X agency's rules and regulations. And no agency regulations in the history of our great country allow some other agency to discipline employees other than its own. The former agency, call it Y, can inform agency X of its findings and recommend to management at X that the employee be disciplined. If X refuses to discipline, then the management at Y can go up the chain of command to the President and have him order X to discipline. The power to discipline employees is vested in the president (5 USC 301, et seq) and he can delegate that authority downward to his respective department heads. It's all up to him.

In summary, the authority to discipline is vested in the employing agency, not the formerly employing agency. The old agency

can recommend, but that's about it, UNLESS…

If agency Y doesn't mind taking political heat, they can report the matter to the IG of agency X, just like anybody can, by dropping a dime on employee misconduct.

[**Wiley Note:** Several years ago, while riding with a chatty Uber driver, he asked me what I did for a living. I told him that I helped government agencies fire people who do bad things. He paused a second, and then asked, "Do these agencies contact you for help, or do you just go around DC looking for bad government employees you can fire?" There are a lot of days, my friends, that I wish that the second option had been the right answer.]

Hope this helps. Hopkins@FELTG.com

Join FELTG in San Juan, PR!

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

FELTG is here to make your life easier by clarifying those misconceptions while explaining how to take defensible misconduct actions quickly and fairly – actions that will withstand scrutiny on appeal by the MSPB, EEOC, or in grievance arbitration.

Join us for the three-day seminar ***Developing & Defending Discipline: Holding Federal Employees Accountable*** in San Juan, Puerto Rico February 25-27, 2020. You'll leave with the tools you need to hold your employees accountable. Register now to get the Early Bird rate.

'Legitimate' Non-discriminatory Reasons – When Preselection is a Defense
By Meghan Droste

Before going to a new restaurant, I always check out the menu online. Part of this is probably a holdover from when I was a picky eater growing up and I needed to make sure there was at least one thing on the menu I would eat. As an adult with a much more normal range of preferences and a willingness to try new things, I think it's also just part of being a planner. I like to know what I'm getting into. My pre-restaurant menu scanning often leads to me knowing exactly what I'm going to order before I even sit down.

A little strange? Perhaps. But in this case, preselection doesn't hurt anyone.

In federal employment, however, preselection can hurt an agency. If an agency official provides a wrongful advantage to help an applicant, or to hurt the chances of another applicant, it can rise to the level of a prohibited personnel action. It can also, however, serve as a legitimate, non-discriminatory reason in defending against an EEO complaint, as the Commission held in *Cory C. v. Social Security Administration*, EEOC App. No. 0120180335 (May 2, 2019).

I urge you to keep in mind as you read about the *Cory C.* case that "legitimate, non-discriminatory reason" is a term of art in discrimination cases, and not all of those reasons may actually be what we might consider legitimate.

In the *Cory C.* case, the agency announced a vacancy for a supervisory management analyst position. Prior to the announcement, the second-line supervisor (S2) for the position promised the position to the eventual selectee (EV). She did so even though the person in the position at the time

reported that EV was not qualified. Once the agency announced the position, the complainant made the best qualified list and was interviewed by the selection panel. The complainant received perfect scores and all of the panel members ranked him highest. Despite this, when the panel recommended the complainant to the selecting official, he ignored common practice and directed the panel to conduct additional reference checks.

When the panel provided positive references for the complainant, the selecting official conducted his own investigation and spoke with a colleague who had worked with the complainant in the past. Based on negative feedback from the colleague, the selecting official rejected the panel's recommendation and selected EV instead. The complainant filed an EEO complaint, alleging discrimination based on race and sex, and retaliation.

The Commission found that the complainant established a prima facie case of discrimination because EV was outside of his protected classes, and found the selecting official's reasons for deviating from common practice in the agency to be not credible. The agency still prevailed. Although there was evidence of pretext, there was no evidence that the selection, or preselection, was because of a protected basis.

The clear preselection for the position, which pre-dated the complainant applying for the position, was a non-discriminatory reason that the complainant could not overcome.

It makes sense that the Commission found in the agency's favor on this one. While it is unfortunate that the agency failed to select the best qualified candidate, there is no evidence that it engaged in discrimination in doing so.

That being said, I would hesitate to call this non-discriminatory reason "legitimate."
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Upcoming FELTG Webinars

Webinar Series: Reasonable Accommodation in the Federal Workplace
Understanding Religious Accommodations: How They're Different From Disability Accommodations
August 15, 2019 – ***That's tomorrow!***

Supervisor Webinar Series
- EEO Reprisal: Handle It, Don't Fear It
August 20, 2019
- Supervising in a Unionized Environment
September 3, 2019

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

Why the Douglas Factors Are Your Friend
September 12, 2019

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

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

Significant Cases and Developments at the EEOC
October 10, 2019

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

Threats of Violence in the Federal Workplace: Assessing Risk and Taking Action
October 31, 2019

We Don't Need Civil Service Reform, Part II: Accountability Doesn't Take as Much Time as You Think
By Deborah Hopkins

Last month, I published the first article in a three-part series *We Don't Need Civil Service Reform*, where I discussed how holding employees accountable is not as difficult as you think. A couple readers took issue with that premise, and said it's NOT that easy. Well, at FELTG our instructors' experience, some as former federal managers and some as legal consultants to dozens of agencies over the years, leads us to this conclusion: Although some agencies have built managerial problems for themselves, when it comes to misconduct and performance removals, the procedures are indeed simple. Actions can be taken without great pains. We don't make this stuff up.

If you haven't read the article, I recommend you do before you move on to today's topic.

Have you noticed when you read the news or watch politicians on TV, the theme about federal employees, on a continuous loop, is that it takes *forever* to take any action against them? In reality, yes, agencies are taking far too long to take action against employees who have performance or conduct issues. But, it shouldn't take a long time – and even better, it doesn't have to.

Holding employees accountable is not as time-consuming as you think it is.

There are legal timelines for taking misconduct and performance actions and unless your agency policy or collective bargaining agreement says you have to do otherwise, I don't know why you wouldn't comply with the legal minimums. In addition, the documents needed to discipline an employee, or to put the employee on a performance demonstration period (or DP, the preliminary action formerly known as the PIP) shouldn't take weeks or months to draft.

In **DISCIPLINE** cases, here's the timeline:

Reprimand: Issue this immediately – as in, the same day the employee violates a workplace rule, or the day you find out the rule was violated. The longer you wait, the more of a disservice you do to yourself (it doesn't count as discipline until the reprimand is given to the employee) and to the employee (she doesn't have a chance to "learn" from the reprimand until she has received it).

It also doesn't make logical sense to wait months to issue a reprimand. Such a delay undermines the assertion that "What you did was bad, and we won't put up with it." Legally, you can still issue a reprimand months after the misconduct – but why would you wait?

Short suspension: The proposal for the short suspension (anything a pay period or less) should also be handed to the employee as soon as practicable after the employee violates the workplace rule – generally within a week.

The employee then has a minimum of 24 hours to prepare a response to the deciding official (some agency policies or CBAs allow 7 or 10 days for the response), and the deciding official's decision after considering the proposal and the employee's response, can go into effect the next day.

That's right. If an employee violates a rule on a Monday, the proposal can be given to the employee on Wednesday or Thursday, and the suspension could be served starting as soon as the following Monday.

Removals, demotions, and long suspensions: We recommend you never demote an employee or suspend for more than a pay period – come to MSPB Law Week if you want to know why – so I'll focus this on removal actions.

The proposed removal should be issued to the employee immediately after the conclusion of the misconduct investigation, and the employee should be placed on notice leave so as not to disrupt the workplace. After all, the employee has done something so bad he deserves to be fired, so the longer you wait, the weaker it makes your argument about the nature and seriousness of the offense. The employee then has a minimum of 7 days to respond to the proposal (again, check policy or CBA). At any point after the response, and within 19 calendar days (per Executive Order 13839) the deciding official must make a decision, which can become effective as soon as day 31 (if the proposal is day 1).

Yes, an employee who violates workplace rules can be out of the workplace and off the payroll in a little over a month after the misconduct occurs.

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

As soon as the supervisor can articulate why the employee's performance is unacceptable on a critical element in the performance plan, the supervisor should initiate a 30-calendar-day demonstration period – what we used to call a PIP – to allow the employee to show he can perform his job at an acceptable level. If the employee is not successful, his removal or demotion should be proposed immediately after the end of the demonstration period. In fact many agencies, such as USDA and HHS, have policies requiring a decision about the employee's future to be made within 7 days of the end of the demonstration period.

After the proposal is issued, the employee then has a minimum 7-day response time, the same as in proposed disciplinary removals. But here's where things become different from disciplinary cases: the deciding official is legally required to issue a decision within 30 days of the expiration of the notice period. Functionally, that falls between days 31 and 60, if the proposal is issued day 1.

It's true, my friends. It only takes a month to remove a poor performer and MSPB has never NEVER ***NEVER*** found a 30-day demonstration period to be too short. The only time you have to make that period longer is if your CBA requires it, or perhaps if the person comes down with some terrible illness and is out of the workplace for three weeks out of the demonstration period.

Whether it's a misconduct or a performance problem, you can have the employee off the rolls within just a few short weeks. It shouldn't take months or years. The system as it exists is built for efficiency. You just have to use it the way it was intended.

Join us next time for Part III, where we discuss how holding employees accountable does not take as much proof as you think.

Take care out there. Hopkins@FELTG.com

Training on Leave Challenges

Whether you're an HR professional, ER practitioner, EEO specialist, supervisor, or agency counsel, you have undoubtedly faced a leave-related challenge. FELTG presents two programs this fall to give you the critical foundation you need to address this complex area of federal employment law.

Join us Monday, September 23 – Friday, September 27 in Washington, DC for ***Absence, Leave Abuse & Medical Issues Week***. Register now to get the Early Bird rate.

If you can't make it to DC that week, join us for our three-part webinar series ***Absence Due to Illness: Tackling Challenges With Sick Leave and FMLA***, which starts on October 16 with a 90-minute session on sick leave. Early bird rates are available until October 7.

The Good News: Mulvaney Is Wrong!
By Ann Boehm

Acting Chief of Staff to the President and Director of the Office of Management and Budget Mick Mulvaney recently spoke at a Republican Party event in South Carolina and boasted about the Administration's clever way of getting Federal employees to quit.

He explained that by moving Department of Agriculture employees "outside this liberal haven of Washington, DC" the employees quit. This is a great thing, according to Mulvaney, because "[i]t's really hard to drain the swamp." He said, "it is nearly impossible to fire a federal worker." And, he clearly believes getting Federal employees to quit benefits the country. To quote the Church Lady, "Well, isn't that special?"

Folks, Mr. Mulvaney is on swampy, not solid, ground. Here are three reasons why.

1) **DC Federal employees are not the part of the swamp that needs draining** (um, that would be Congress). I come from a distinguished line of DC swamp dwellers. My father, sister, and I all retired from the swamp. My husband is a current swamp dweller. I promise you the American taxpayer has gotten plenty of value from their tax dollars with us.

   Also, I've worked with many, many amazing DC swamp dwellers. Interestingly, they are not all liberal. Fox News was often the channel of choice in the office gym.

   But that doesn't even matter. Most of the Federal employees with whom I have worked in the DC area are hardworking, committed, talented employees. There's no reason to want them to quit. They should be praised.

2) **Federal employees don't work only in DC**. I have been a FELTG instructor since November of 2018. During that time, I have spoken to outstanding managers, supervisors, attorneys, human resources specialists, and employees in 17 different states, including Alaska and Hawaii. These folks protect our national parks, our national defense, our water rights, Federal lands, public health – so many things that most Americans either take for granted or don't even realize. Apparently Mr. Mulvaney is unaware.

3) **You *can* fire Federal employees**. There are some bad Federal employees, and they are like bad apples. They can spoil the whole bunch. But here's the truth: They can be fired for performance or misconduct. There's a process but, as we teach and write about repeatedly, you can handle problem employees. In fact, you must handle problem employees.

Federal employees, hold your head high. Do your public service. Prove Mr. Mulvaney wrong and get rid of the bad employees — and cheer on the good ones, even in swampy DC! And keep up the good work! Boehm@FELTG.com

Back by popular demand!

MSPB & EEOC Hearing Practices Week

FELTG presents a workshop-based seminar focused on practicing effectively and successfully in administrative hearings involving federal employment law -- MSPB and EEOC, plus arbitration.

This weeklong training will be held November 18-22 in Washington, DC.

Accommodation and Performance Issues
By Barbara Haga

The topic of accommodation sometimes arises when an employee is having difficulties meeting the performance requirements of the position, and could also occur when the level of performance has dropped even though it is still acceptable performance. This month, I continue the discussion of these issues as addressed in the EEOC guidance document *The Americans With Disabilities Act: Applying Performance And Conduct Standards To Employees With Disabilities*.

Section III.a of the guidance document covers the matters addressed in this column. Sections quoted from the EEOC document are in italics.

Performance at Fully Successful or better. Question 4 deals with situations where the employee only raises the issue of disability after performance had fallen to a level lower than what had been met previously had been reached. In the Federal workplace, this could be an employee who received a Level 4 Exceeds Fully Successful last cycle, but a Fully Successful this cycle.

> *4) If an employer gives a lower performance rating to an employee and the employee responds by revealing she has a disability that is causing the performance problem, may the employer still give the lower rating? Yes. The rating reflects the employee's performance regardless of what role, if any, disability may have played.*
>
> *Example 4: Last year Nicole received an "above average" review at her annual performance evaluation. During the current year Nicole had to deal with a number of medical issues concerning her disability. As a result, she was unable to devote the same level of time and effort to her job as she did during the prior year. She did not request reasonable accommodation (i.e., inform the employer that she requires an adjustment or change as a result of a medical condition). The quantity and quality of Nicole's work were not as high and she received an "average" rating. The supervisor does not have to raise Nicole's rating even though the decline in performance was related to her disability.*

In this example, if Nicole filed a grievance over the rating, the fact that she had difficulty maintaining the level of performance previously assigned because of a physical or mental condition should not affect the outcome. Assuming that the supervisor completed the rating properly and could substantiate the ratings assigned, the performance in this case was judged against the written standard and assessed as meeting those requirements but not exceeding them, so the deciding official should sustain the rating.

If Nicole gave the disability as a reason for the lower performance accomplishment, there should then be a conversation with Nicole about future performance. In the Practical Guidance following Q.4, the EEOC writes: *If an employee states that her disability is the cause of the performance problem, the employer could follow up by making clear what level of performance is required and asking why the employee believes the disability is affecting performance. If the employee does not ask for an accommodation (the obligation generally rests with the employee to ask), the employer may ask whether there is an accommodation that may help raise the employee's performance level*.

Performance at Unacceptable. What if the performance is at a level which would warrant some corrective action has already

occurred and the issue of disability arises? Questions 5 and 6 deal with these scenarios. The basic premise is as follows:

When an employee does not give notice of the need for accommodation until after a performance problem has occurred, reasonable accommodation does not require that the employer:

- *tolerate or excuse the poor performance;*
- *withhold disciplinary action (including termination) warranted by the poor performance;*
- *raise a performance rating; or*
- *give an evaluation that does not reflect the employee's actual performance*

If the employee requests accommodation because a disability is interfering with the ability to maintain acceptable performance, two different scenarios could present themselves, whether the request occurred after the opportunity to demonstrate acceptable performance (ODAP) was concluded or was raised prior or during the ODAP.

Post ODAP. The guidance document provides a private sector example of what would happen when the disability was not raised until after the warnings and corrective procedures had taken place.

> *Example 9: An employee with a small advertising firm has a learning disability. Because the employee had a bad experience at a prior job when he requested accommodation, he decides not to disclose his disability or ask for any accommodations during the application process or once he begins working. Performance problems soon arise, and the employee's supervisor brings them to the employee's attention. He tries to solve the problems on his own, but cannot. The firm follows its policy on counseling and disciplining employees who are failing to meet minimum requirements, but these efforts are unsuccessful. When the supervisor meets with the employee to terminate his employment, the employee asks for a reasonable accommodation.*
>
> *The employer may refuse the request for reasonable accommodation and proceed with the termination because an employer is not required to excuse performance problems that occurred prior to the accommodation request. Once an employer makes an employee aware of performance problems, the employee must request any accommodations needed to rectify them. This employee waited too long to request reasonable accommodation.*

For a Federal employee, this could play out in two ways. One, in a conversation at the conclusion of the PIP advising the employee that he/she was not successful in reaching an acceptable level of performance, the employee raises the disability. The issue of a disability could also be raised in conjunction with a reply to a subsequent proposed adverse action based on the failed ODAP. In neither case would the agency be required to forgive the unacceptable performance as an accommodation.

We'll continue to explore these performance-related issues next time! Haga@FELTG.com.

ER Spotlight: Managing Attendance and Conduct

Who isn't struggling with attendance and/or conduct issues? Barbara Haga's intensive seminar in Boulder City on August 21-22, covers everything from sick leave and FMLA to the principles, penalties and tools you need to effectively discipline.

Tips From the Other Side: August 2019
By Meghan Droste

According to the EEOC's federal sector data, harassment is the most common issue in federal sector EEO complaints, with over 8,000 filed in fiscal year 2018. *See* Form 462 Complaints Tables.

Unfortunately, the improper fragmentation of harassment claims is one of the most common errors agencies make when dismissing complaints and claims. Based on data from fiscal years 2009-2012, 57 percent of the reversals of agency dismissals were in cases involving dismissals for failure to state a claim, while 24 percent were in cases involving dismissals for untimely EEO contact. *See* Preserving Access to the Legal System: Common Errors by Federal Agencies in Dismissing Complaints of Discrimination on Procedural Grounds.

Fragmentation — the breaking up of a hostile work environment claim into separate and distinct events and claims — is a common cause of these improper dismissals. Although the Commission has tried to correct the issue for years, agencies, unfortunately, continue to fragment claims.

The Commission's decision in *Reita M. v. Department of Transportation*, EEOC App. No. 2019001791 (June 4, 2019), provides an example of what fragmentation can look like and why the Commission will ultimately reverse an agency's dismissal that is a result of fragmentation. In support of her complaint, the complainant provided 38 pages of incidents of harassment. From that, the agency identified only two claims, one of disparate treatment based on six events that took place in September-November 2016 and February 2018, and one of harassment based on seven incidents that occurred from June 2015 through April 2018. The agency then dismissed the disparate treatment claim as untimely, finding that all of the incidents occurred more than 45 days before the complainant contacted a counselor, and dismissed the harassment claim for failure to state a claim because the incidents were sporadic and not sufficiently severe or pervasive. I have seen agencies do this far too many times (most recently a few weeks ago). It is unsurprising that the Commission reversed the dismissal in the *Reita M*. case. The agency clearly ignored that the complainant was alleging a pattern of ongoing harassment and instead looked at only a handful events, and then broke them down further into two distinct claims.

If you will permit me to stand on my soapbox for a moment, I cannot say strongly enough that agencies must try harder to avoid fragmenting claims. From the complainant perspective, it incorrectly prevents them from pursuing otherwise valid claims of harassment and results in drawing out an already lengthy process if they file an appeal. From the agency perspective, it "substantially increases case inventories and workloads when it results in the processing of related matters as separate complaints." *See* EEOC Management Directive 110, Ch. 5, § III. If nothing else, you can save yourself the headache of defending an appeal the agency will lose if the agency accepts hostile work environment claims without fragmentation. Droste@FELTG.com

Create a Healthy Environment for Employees with Mental Disabilities
By Dan Gephart

Two mass shootings earlier this month left America shaken. After the horrific event in El Paso, we went to bed saddened, only to wake to news of similar violence in Dayton. The aftermath of these tragedies is as predictable as the ending of the *Titanic* movie. Thoughts are shared, prayers are offered, and urgent pleas for gun reform are made. National news trucks set up camp in town, then pack up after the vigils and funerals are held.

At some point during the aftermath, conversation turns to mental health. We need to improve the mental health care system in this country. But when politicians and talking heads discuss mental illness only after a violent event, they reinforce the myth that people with mental health impairments are violent and unpredictable.

Sadly, those myths still infiltrate our workplaces, so I'm using my FELTG soapbox this month to explain what you can do to create a healthy work environment for employees with mental disabilities. If you attended Shana Palmieri's FELTG webinar, Successfully Managing Federal Employees with Mental Health Disabilities, earlier this year, then this information is not new to you. [If you missed the webinar, I highly suggest you contact us to order a recording.]

It's *not* true people with mental illness are unstable employees and more prone to violence. It's *not* true people with mental health issues are unable to hold down a job, just as it's *not* true personality weakness or character flaws cause mental health problems.

Here are the facts:

- Only 3-5% violent crimes are committed by people with a mental illness, according to data from Health and Human Services. In fact, statistics show people with mental illness are at least 10 times more likely to be the victim of a crime than the general population.
- People with mental health impairments are just as productive as other employees.
- Mental health diagnoses are caused by a combination of biological factors (genes and brain chemistry), life experiences that may include trauma and abuse, and family history.

Why should you care about this? Well, one in five Americans are living or with or have experienced a mental health condition, and mental health problems are the leading cause of disability in the United States, according to the National Alliance on Mental Illness. So whether you know it or not, you are working alongside a colleague or a supervisor, or managing an employee with a mental health impairment.

Due to the myths and the stigma, as well as the aforementioned lagging health care system, only a third of individuals with mental health issues seek treatment. That's not good for the workplace, as it leads to the indirect costs of lost productivity and absenteeism. On the flip side, 80 percent of employees who do receive treatment for mental health issues reported improved job satisfaction and improved efficiency.

Creating a healthy workplace environment that is inclusive of individuals with mental health disabilities does not mean getting personally involved in an employee's life, or taking on the role of a counselor. In fact, that prying is counterproductive. Here's what a health workplace environment does:

- It is receptive to employee requests for accommodations, even if that person's impairment may not be obvious to you. Most accommodations that have been effective for employees with mental disabilities cost very little.
- It addresses bullying behaviors that create work-related stress and present risks to the mental health of workers. Unchecked bullying leads to reduced productivity and increased staff turnover.
- It ensures managers and supervisors provide regular honest and constructive feedback to all employees. Strong communication practices benefit all employees.

These actions not only support employees with mental health disabilities, they help all employees, and they make your agency nimbler and more productive. Gephart@FELTG.com