Federal Employment Law Training Group

Teaching the Law of the Federal Workplace

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MSPB in the Big Time

Last Sunday, *60 Minutes* aired a story called "Three Empty Chairs," about the lack of members at the U.S. Merit Systems Protection Board. Our world of Federal employment law is relatively small, so when we hit the mainstream media it's something exciting.

If you didn't catch the original broadcast, check it out here.

As of last week, there were 2,900-plus individuals waiting for a quorum so their cases could be decided. That's 2,900-plus people hoping to get their jobs back, or their whistleblower reprisal claims remedied, and agencies waiting for a final answer in 2,900-plus separate actions. And the longer this goes, the more taxpayer money is needlessly wasted, and the longer peoples' lives are put on hold.

There's no reason things should be this way, so I urge you to call your U.S. Senators and ask them to push for a vote on these potential appointees, some of whom were nominated more than two years ago. Let's start to see some action, and some justice, at the MSPB.

In this month's newsletter, we continue to provide guidance on COVID-related workplace issues, as well as the confusion with performance monikers, why agencies should fire bad LEOs, timing in reasonable accommodation cases, and more.

Take care,

Deb

Deborah J. Hopkins, FELTG President

THE FELTG VIRTUAL TRAINING INSTITUTE PRESENTS ...

Developing & Defending Discipline: Holding Federal Employees Accountable
June 23-25

Federal Workplace Challenges in a COVID-19 World: Returning to Work During a Pandemic
June 29

EEO Challenges in a COVID-19 World
June 30

Advanced Employee Relations
July 7-9

Absence, Leave Abuse & Medical Issues Week: COVID-19 and Beyond
July 13-17

Emerging Issues Week: The Federal Workplace's Most Challenging Situations
July 20-24

Federal Workplace 2020: Accountability, Challenges, and Trends
July 27 – July 31

EEO Refresher Training 2020
July 27 & 29

FLRA Law Week
August 3-7

EEOC Law Week
August 10-14

Effectively Managing and Communicating With Federal Employees
August 19-20

UnCivil Servant: Holding Employees Accountable for Performance and Conduct
September 9-10

Visit **FELTG Virtual Training Institute** for more information and to register for these events.

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No Good News This Month – Just What I Know

By Ann Boehm

I just can't write Good News this month. There's too much bad news. Too much happening that doesn't make sense. Months of dealing with COVID-19, and now George Floyd. I'm not a good enough writer to express proper thoughts on the George Floyd tragedy. But I do know this: Don't let bad employees keep their jobs! We teach it. Heck, let's be honest – we preach it. And yet somehow, bad employees keep their jobs.

My Federal law enforcement friends, now is the time for you to take more seriously than ever issues of misconduct and poor performance by law enforcement officers. There are so many good law enforcement officers. We don't need the bad ones. They can end up hurting people. They can end up killing people.

And this guidance applies to all Federal employees. Every Federal employee is working on behalf of the American public. You all have important missions. It's pretty obvious from the news that the American people care a lot about the work of the Department of Health and Human Services, particularly the Centers for Disease Control and Prevention, the Food and Drug Administration, and the National Institutes of Health. It's easy to dismiss the impact of a weak employee until there is a crisis. If there are bad employees, they can harm the public not just in the United States, but the world.

Is avoiding a personnel lawsuit really worth that? Take the right steps. The law allows (and, in fact, obligates) you to remove poor performers. The law allows you to utilize progressive discipline and remove an employee who continually engages in misconduct. And if a single instance of misconduct is bad enough, you don't even have to use progressive discipline. Yes, you can fire a Federal employee.

We can help you handle misconduct cases so that you win the lawsuit. We can help you remove the poor performer and win the lawsuit. Where we can't help you is when the bad officer harms an individual, and the public trust. We can't help you after the bad scientist misses crucial research data and an opportunity to properly manage a pandemic.

If you lose an MSPB case or EEOC case when you remove a bad apple, then let the media know. Let the MSPB or EEOC defend the decision. But don't avoid removing a bad employee just because you might lose a case. It will be much worse if the media ends up reporting that an employee who harmed a citizen had multiple instances of misconduct and stayed on the job. Or that the employee who mishandled review of a COVID-19 vaccine was a chronically poor performer.

I would also like to think now is the time for the unions to take a good look at how they address performance and misconduct cases. Of course employees have rights, but a bad employee is a bad employee. Remember that a bargaining unit is made up of many, many good employees, and too often the focus is on the bad ones. Figure out a way to protect good employees without over defending the bad.

So that's my challenge. It's a good time to assess performance and misconduct. Do the right thing. Please don't make the news because of a bad employee. Make the news for doing what your mission requires you to do for the American people. I know you can do it! Boehm@FELTG.com

FELTG Consultation

FELTG's team of specialists has decades of experience. They can help you tackle your most challenging issues. If you have a difficult case or situation and think FELTG can help you, email info@feltg.com or call 844-283-3584.

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He Claimed He Teleworked for 2 Months, but His Laptop Charger Was at the Office
By Deborah Hopkins

Here's a timely hypothetical that recently came across the FELTG desk:

> Dear FELTG,
>
> My agency sent all employees home to telework starting at the beginning of April. Hypothetically, the agency learned that an employee left his computer power cord in the office before he started teleworking, but he has been submitting 40 hours a week on his time sheets for the past two months. His computer charge lasts approximately 6 hours, and the employee's work tasks requires use of the computer all day, every day.
>
> I've been advised that investigating this misconduct would be too difficult because there wouldn't be witnesses to attest the employee wasn't working, and that our agency can't discipline the employee anyway because of the current situation with the pandemic. Do you have any thoughts on this?

And our FELTG response.

Thanks for the note, FELTG reader. This one seems so easy to me. The employee is claiming pay for a large amount time when he did not work (approximately 320 hours), which is an egregious act of misconduct.

As members of FELTG Nation know, in order to discipline a Federal employee for misconduct, the agency must follow the five elements of discipline.

1. Is there a rule? Yes, of course. Federal employees can't lie on their time cards. It violates Federal statute to do so. See, e.g., 18 U.S.C. § 641; 18 U.S.C. § 287; 18 U.S.C. § 1001; 31 U.S.C. § 3729.

2. Does the employee know the rule? Yes, every Federal employee receives training on how the time and attendance system works and is told their input must accurately reflect their schedule. In addition, most employees are subject to some version of the following when filling out their time and attendance records: "I certify that the time worked and leave taken as recorded on this form is true and correct to the best of my knowledge." Moreover, the employee must click "Affirm" to validate, or sign their name if they submit a paper time and attendance form.

3. Do you have proof the employee broke the rule? The standard here is preponderant evidence (or substantial evidence, if you're covered by the new VA law). The employee has been at home for two months and has admitted he has not had a power cord for the laptop the entire time, yet he has submitted for full pay every day. Is this preponderant evidence? Sure it is. Your evidence is the employee's admission. Remember, preponderant evidence – more likely than not – is all you need, and the employee's admission meets that standard. There is also presumably evidence he is not working because no work has been submitted during this time. (There's also a supervisory issue here, because a supervisor should be aware if an employee has not turned in any work in two months. But that's another article.)

4. Justify your penalty. Most agencies are required to justify a penalty by using the *Douglas* factors. A good starting point is to add up the amount of money the employee claimed and was paid, for time not actually worked. That amount, whatever it comes to, is an egregious misuse of taxpayer dollars. You can also address the loss of trust and confidence in the employee, plus any other *Douglas* factors that aggravate the penalty such as past discipline, employee performance, and rehabilitation potential. The COVID-19 pandemic might be a mitigating factor for some employee misconduct (for example, an employee did not log on to a web meeting because they were taking care of a child who was sick with

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the coronavirus and had a 103-degree fever), but in this hypothetical case a pandemic does not forgive, or even mitigate, two months of serious ongoing misconduct.

5. Provide due process. You'll complete these steps:

- A proposal letter containing the charge(s) and penalty
- The employee can respond to the charge(s)
- An impartial decision

As far as the charge is concerned, in addition to the falsification/claiming time not worked/whatever you call the misconduct here, there could easily be another charge for the employee not alerting the supervisor that he left his laptop charger in the office and had no way of doing his work. Your agency telework policy likely mentions a process employees should follow if they have technical issues while on telework, and at the very least you can justify that the employee *should have known* that when he was on telework he was expected to work, and that if there were problems, he should alert the agency as soon as possible.

This scenario is not uncommon, unfortunately, and we will be addressing similar challenges on July 1 during the webinar **Performance and Conduct Problems During a Pandemic: Holding Remote Employees Accountable**. Hopkins@FELTG.com

COVID-19 and the Workplace

Ann Boehm and Shana Palmieri present Federal Workplace Challenges in a COVID-19 World: Returning to Work During a Pandemic on June 29 from 12:30 – 4 pm ET. Register now.

The next day (June 30) Katherine Atkinson will share how to handle specific EEO issues during the pandemic. *EEO Challenges in a COVID-19 World* will be held from 12:30 – 4 pm ET. Register now.

EEOC Decisions and Resolution Affirm: Black Lives Matter

By Meghan Droste

No matter where you live, there likely have been protests in or near your city or town in the past two weeks addressing ongoing issues with policing and racial justice. In DC, we have seen large numbers of people brave the current health risks to stand together in support of Black lives. In my opinion, it has been profoundly moving to see such a call to action, even in this uncertain time.

While I won't use this space to engage in a discussion of these pressing issues, it is important to recognize that race discrimination continues be an issue in the workplace, including in the Federal government. Here are just a few of the decisions from the past two years finding evidence of race discrimination:

Glenna D. v. Department of the Air Force, EEOC App. No. 0720180026 (June 6, 2019): The complainant, who is Black, was the only employee assigned to a lead position at a lower grade (GS-12 instead of GS-13) "and not coincidentally, [was] also the only employee who was not Caucasian." The Commission upheld the administrative judge's finding that the agency discriminated against the complainant on the basis of race.

Sol W. v. Department of Defense, EEOC App. No. 0720180018 (August 15, 2018): The agency removed the complainant, who is Black, during his probationary period after he reported misconduct by a white coworker. The Commission reversed the agency's rejection of the administrative judge's finding of race discrimination.

Tona C. v. Department of Veterans Affairs, EEOC App. No. 0120151847 (April 4, 2018): The complainant's supervisor repeatedly referred to the complainant and other Black

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employees as "ninjas," telling the complainant, "Ninjas is a term I use for [n-word] who do not deserve a desk job. A ninja is supposed to be pushing brooms and cleaning toilets." The Commission reversed the administrative judge's grant of summary judgment in the agency's favor.

Minnie M. v. Department of Veterans Affairs, EEOC App. No. 0120140003 (March 20, 2018): The agency selected three white employees to remain on a more prestigious team while reassigning all of the Black and Asian employees to a less prestigious team. The Commission reversed the administrative judge's summary judgment, finding there was enough evidence to proceed to a hearing.

Elmer C. v. Department of Transportation, EEOC App. No. 0120150721 (February 15, 2018): The complainant learned during the EEO process that a memo ranking candidates for a position he applied to included the notation "black" next to his name, with no other similar notations for any other candidates. The Commission found the administrative judge improperly failed to consider this evidence of racial bias when issuing a decision in the agency's favor without a hearing.

Because of the recent deaths of George Floyd, Breonna Taylor, and Ahmaud Arbery, and, I imagine, in part because there are still complaints like the above, the Commission issued a resolution on June 9, 2020 confirming that it "cannot be silent about things that matter" and stating clearly that "Black lives matter." The Commission also resolved to "redouble [its] efforts to address institutionalized racism, advance justice, and foster equality of opportunity in the workplace." I encourage you all to read the full resolution, which is available here. Droste@FELTG.com

EEOC Law Week

FELTG's EEOC Law Week will be held virtually August 10-14. Register now.

Guidance Gives Us a Reading on the Temperature-Taking Issue

By Barbara Haga

Last month's column addressed what to do if an employee who was reporting to your workplace refused to have his or her temperature checked. Guidance has been issued from CDC and EEOC on the topic of temperature-taking in the workplace. In the General Business Frequently Asked Questions in the section entitled "Reducing the Spread of COVID-19 in Workplaces" (updated May 3, 2020), the CDC describes use of such screenings to limit the spread of the virus. In Section B.7 of the EEOC guidelines entitled, Pandemic Preparedness in the Workplace and the Americans with Disabilities Act (dated March 21, 2020), the EEOC stated temperatures could be taken.

So, where is OPM in all of this? Very little has been published on this point on the OPM site. The Employee Relations guidance does not mention taking temperatures. OPM directs agencies to the CDC website for medical-related issues. OPM does include a short statement related to medical on the page entitled "Pandemic Information Agency Preparation." OPM's paragraph is entitled "Medical Evaluation Program Guidance," and it states, "Agencies may establish periodic examination or immunization programs to safeguard the health of employees whose work may subject them or others to significant health or safety risks due to occupational or environmental exposure or demands. The new programs are established through written policies or directives. (5 CFR 339.205)"

Interestingly, OPM does not include taking temperatures in their return to work plan found here. So, what is an agency to do? Is there authority to take temperatures? We all know that the OPM regulations in 5 CFR 339 establish limitations on when agencies can

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conduct physical and psychiatric examinations. We usually address these regulations related to a specific individual when there is a question about whether he or she is able to perform the essential functions of his or her job. At FELTG, we have written many times about the dangers of not complying with those regulations and what happens when the MSPB gets a case where an agency has directed an examination that does not comply with those regulations. See *Doe v. Pension Benefit Guaranty Corporation*, 117 MSPR 579 (2012) and *Georgia Harris v. Department of the Air Force*, 62 MSPR 524 (1994), *dismissed without opinion*, 39 F.3d 1195, (Fed. Cir. 1994). In both cases, the employees were directed to undergo psychiatric examinations which were found to have been unenforceable.

However, as noted above, the OPM regulations cover other situations where agencies may need to obtain medical information. The actual text of the regulation is as follows:

> Agencies may establish periodic medical examinations, medical surveillance, or immunization programs by written policies or directives to safeguard the health of employees whose work may expose them or others to significant health or safety risks due to occupational or environmental exposure or demands. The need for a medical evaluation program must be clearly supported by the nature of the work. The specific positions covered must be identified and the applicants or incumbents notified in writing of the reasons for including the positions in the program.

Surveillance Programs

What would such surveillance programs typically cover? Normally such a program would apply to certain categories of employees, such as employees working in a certain area of the world, or certain types of jobs, such as nuclear workers. For example, DoD 6055.05-M, May 2, 2007 (updated August 31, 2018) entitled "Occupational Medical Examinations and Surveillance Manual" contains 82 pages of guidance regarding such screenings. The manual establishes requirements for examinations for exposure to chemicals such as benzene and cadmium and also sets requirements for evaluation for exposure to asbestos and noise, as well as for respirator use. There are specific requirements for jobs such as firefighters, police officers, and commercial drivers. The Department of State has established protocols for medical clearances for individuals in overseas government positions here.

COVID-19

Where does that leave us with COVID-19? This is a significant health risk that could occur in your facility. Infection is a risk for everyone in the workplace, although some job categories could clearly be a greater risk because of contact with patients in a medical setting, dealing with inmates, interacting with the public, etc. Because it is communicable, it affects not just the employee, but also the members of each employee's household. New infections contribute to community spread, which these months of closure and social distancing were aimed at limiting. Could an agency check temperatures to limit the risk of exposure in the workplace? It would seem to me that the regulation provides for such measures.

What would need to be in place? The regulations require the need for the program to be clearly supported by the nature of the work. I would take the position that this use of temperature screening would apply to all jobs because there is a risk of spread of the virus in the workplace, whether that workplace is a hospital or an administrative office. The regulations also say that specific positions covered must be identified and employees notified in writing of the reasons for including the positions in the program. Therefore, my recommendation would be to send a notice to all employees advising them of the requirement and

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explaining why it is necessary, outlining your procedures for completing it, assuring them that the results will be confidential, etc.

What to Expect from the Workforce

Obviously, temperature checks are not a perfect measure. Some infected individuals may not have a fever. However, temperature checks are taking place in a lot of places these days. I fully expect to have my temperature taken when I go back to the gym and when I go to the airport again. If you are testing temperatures at your building and I am asked to come on-site to do training, then I will have a temperature check, too! There has not been a major revolt that I have heard of so far. However, that does not mean that there might not be one.

As you communicate with your unions, you might anticipate resistance from some groups. However, AFGE and NTEU have included temperature checks on their lists of what needs to be in place to return to work. In an article posted on the NTEU site dated June 4, 2020, the NTEU President suggested the Federal government could do more to protect workers by broadening testing capabilities and screening employees upon their arrival at the work site. AFGE has a return to work checklist, which includes 10 principles. Sixth on the list includes temperature checks upon arrival.

Alternatively, Fedsmill reported that the Federal Workers Alliance – representing 24 unions that form, in their words, "the core of the Federal employee labor movement" – listed their demands for returning employees to the workplace. (NAGE, POPA, IAMAW, and IFPTE are in this group). There are 11 demands, including requiring the wearing of masks, providing PPE for employees, on-demand testing by the "most reliable tests," "immediate and thorough" reporting to employees that a person suspected of having the virus was in the workplace, etc. Checking temperatures is an obvious omission on this list. Repeating what I said last month: None of us have experience with a situation like this. Please keep sharing your questions/issues. We can get through this more successfully if we put our heads together! Haga@feltg.com

[Editor's note: The EEOC has also released guidance on taking temperatures. We'll discuss that during the virtual training EEO Challenges in a COVID-19 World: Returning to Work During a Pandemic on June 30.]

THE FEDERAL WORKPLACE 2020: ACCOUNTABILITY, CHALLENGES, AND TRENDS

Join us for the conference-like weeklong virtual training event **Federal Workplace 2020: Accountability, Challenges, and Trends** with 14 different live instructor-led sessions, July 27-31. Attend as many sessions as you want, from one to all, or anything in between. Earn 8 EEO refresher hours. Earn CLE and Ethics credits.

These sessions are being offered:

- *What Every Counselor and Investigator Needs to Know in 2020*
- *The Foundations of Accountability: Discipline and Performance*
- *Charges and Penalties in Disciplinary Cases*
- *Providing Performance Feedback That Makes a Difference*
- *What to Do When Performance Goes Bad*
- *Reasonable Accommodation in 75 Minutes*
- *The Latest on Sexual Orientation and Transgender Discrimination*
- *When the ADA and FMLA Collide*
- *Navigating the Morass of Mixed Cases*
- *Performance and Conduct Problems During a Pandemic: Holding Remote Employees Accountable*
- *Working With Your Agency's OIG*
- *Handling Behavioral Health Issues in the Federal Workplace*
- *Case Law Update: EEOC, FLRA, MSPB, and More*
- *Ethics for the Government Attorney*

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Tips From the Other Side: How Long is Too Long to Provide Accommodation?
By Meghan Droste

How long is too long to wait? As with so many things that we do in the practice of law, the answer is: It depends. If we're talking about morning caffeine, an hour might be too long for many of us. If we're talking about seeing the new TV show that everyone is watching, a day or two might be too long, depending on how good your friends are with not spoiling things. And if we're contemplating when to get a haircut, well, these days, a month or two might be OK. Context, and what we need, is really key in determining how long is too long.

Continuing our discussion of reasonable accommodation issues from last month, let's figure out how long is too long to wait to provide an accommodation. Just like the above examples, context matters, and will determine whether there will be a finding that an agency is liable for a failure to accommodate because it waited to provide an accommodation.

The Commission considers five factors in deciding whether there was an improper delay: 1) the reason for the delay; 2) the length of the delay; 3) how much the employee and the agency each contributed to the delay; 4) what the agency was doing during the delay; and 5) whether the accommodation was simple or complex to provide. *See Ruben T. v. Dep't of Justice*, EEOC App. No. 0120171405 (March 22, 2019).

So how long is too long? Two months can be too long when the accommodation is relatively straightforward. *See Aldo B. v. Dep't of Health & Human Servs.*, EEOC App. No. 0120172838 (February 21, 2019) (two-month delay in providing sign language interpreters). But three months can be OK if the agency has to order special equipment and the delay is because of the manufacturer and not because of the agency. *See* EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA, No. 915.002 (October 17, 2002) at Q. 10.

The key is to work as quickly as possible and to maintain good documentation of what the agency is doing to provide the accommodation. Not only will this help if there is litigation, but it will also help to ensure that you are accommodating employees in ways that let them perform their jobs as soon as possible. That will be a win for everyone involved. Droste@FELTG.com

DOP, DP, ODAP, OIP, PIP: Is it Just Me, or Have Performance Monikers Gotten Confusing?
By Deborah Hopkins

There are a few items in President Trump's May 2018 Civil Service Executive Order Trifecta with which I don't necessarily agree. But there are a lot of provisions that actually mirror what FELTG has been teaching for two decades. Among the items that I really like is the directive that employees with performance problems (those performing at an unacceptable level on any critical element) should be given a final opportunity to demonstrate acceptable performance, not to exceed 30 days.

After this EO came out, some agencies revamped their performance policies and changed the language from the existing focus on performance *improvement* by utilizing a Performance Improvement Plan (PIP) to some other moniker that gives the employee a 30-day opportunity to

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demonstrate he can perform their job at an acceptable level. The demonstration emphasis more accurately mirrors the language of the statute found at 5 USC § 4302(c)(6). An opportunity to improve could go on for quite a long time, perhaps interminably; an opportunity to demonstrate whether you can do the job you were hired to do shouldn't take more than three or four weeks.

For what it's worth, "Acceptable" performance is whatever the line is above Unacceptable – so if your agency has a 5-level rating system then Marginal/Minima/Partial standards count as acceptable performance. That's right, *be minimal* is the goal. ["Hey, problem employee: We at the agency would consider it acceptable if you would bring your performance up to minimal. If you do that, you get to keep your job forever." What a target, huh?]

But, I digress.

Back to poor performance. Articulating the acronym "PIP" is easy. It rolls off the tongue and almost everyone knows what it means. But I am trying to break my PIP habit (two years later), and call it something more appropriate. In the textbook *UnCivil Servant: Holding Employees Accountable for Performance and Conduct* (now in its 5th Edition), Bill Wiley and I call this 30-day opportunity a Performance Demonstration Period, or DP. But in my travels across the country to agencies near and far (before the pandemic, when I was on a plane almost every week), and my more recent time in front of a virtual training screen, I have learned there are now several permutations to what Federal employees call this DP.

Demonstration Opportunity Period
- Acronym: DOP
- Agency using it: USDA

Opportunity to Demonstrate Acceptable Performance
- Acronym: ODAP
- Agency using it: HHS

Notice of Opportunity to Demonstrate Acceptable Performance
- Acronym: NODAP (As far as I can tell, NODAP is an informal acronym and does not exist in writing in the agency's policy, but it makes sense to me.)
- Agency using it: DOI

Opportunity Period
- Acronym: OP
- Agency using it: OPM. This is unofficial and hasn't been verified by the powers-that-be, but we have heard rumors from students that the very agency which gave us the term "PIP" now has adopted a more correct moniker.

Opportunity to Improve Performance
- Acronym: OIP
- Agency using it: HUD. As far as we at FELTG can tell, this policy has not been changed to reflect the language of "opportunity to demonstrate" rather than the "improve" language its name reflects.

Performance Improvement Plan
- Acronym: PIP
- Agencies (still) using it: Commerce, State, DOD, DHS. It's interesting. If what I am seeing on these agencies' websites, where the policies are posted, are up-to-date, a number of agencies – headed up by President Trump appointees – seem to be ignoring the EO's mandate to move away from the improve/PIP mentality.

So, whether you DOP, OP, POP, ODAP, NODAP, OIP, DP, or PIP, remember the purpose is to allow the employee an opportunity to demonstrate acceptable performance per 5 USC §4302(c)(6), and not to allow the employee a perpetual opportunity to incrementally get better. Hopkins@FELTG.com

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Consider the Impact of Stress in Workplace Reopening Plans
By Dan Gephart

A glimpse at the Internet during the coronavirus pandemic reveals people cutting their own hair, making their own bread, showing off their TikTok dance moves, and building elaborate Rube Goldberg machines.

Fun, fun, fun.

However, dig a little deeper and you'll find that much of our nation, if not the world, is besieged by stress. Reports of police brutality, rising unemployment, a volatile stock market, and the continuing pandemic are pushing many to the edge. One professor told Time Magazine that we're suffering from a "national anxiety." This is not a flippant remark. It's the truth, and it's frightening.

We all know the friend, colleague, or family member who proudly claims: "I perform best under pressure." Well, that's great. Go take a seat over there next to Michael Jordan and have fun comparing your stress-filled accomplishments. There are many people, including plenty currently employed by the Federal government, who must routinely perform their jobs under highly stressful situations. And they do it every day. Quietly, without fanfare. I commend them.

However, if you're not required to take on inordinate amounts of stress, you shouldn't. Stress is *bad* for the body. It can cause minor ailments like stomachaches, headaches, heartburn, tension, and it can lead to serious health issues like depression, heart attacks, and strokes. Stress weakens immune systems and makes the body more vulnerable to attacks, such as the one posed by COVID-19. Put simply: If you're stressing out about the coronavirus, you're making yourself more at risk for getting it.

Now, think about the amount of stress this pandemic has caused and then try to imagine what that means to those individuals already suffering from anxiety disorders.

Last month, we discussed three issues to consider as you prepare to return employees to the physical workspace – ADA, age discrimination, communication. The previous month, I wrote about the rise in pandemic-related discrimination. This month, I turn the attention to stress and anxiety-related disorders that will make the already difficult transition back to the workplace an even more taxing endeavor for some employees.

Most people get depressed at some time in their lives, especially if they have suffered a loss. But there are others who have clinical depression, which is a much more serious condition that ranges from mild temporary episodes of sadness to suicidal ideation or behaviors.

It's the same with anxiety. Everyone gets a little anxious at times, such as when our favorite team is just a few yards away from the endzone with a playoff spot on the line, or when we have to make a presentation to our superiors. That anxiety is fleeting. That's not the case for those with anxiety disorders. An anxiety disorder is a psychological disorder caused by excessive fear or anxiety. It can be severely debilitating, and it affects up to 30 percent of the adult population at some point during their lives.

Common anxiety disorders include panic disorder, phobias, social anxiety, posttraumatic stress disorder, acute stress disorder, separation anxiety disorder, and obsessive compulsive disorder.

Missions will not be accomplished if incapacitating stress runs rampant upon the re-opening of the workplace.

What can you do to address this challenge?

First step: Take care of yourself, even if you don't have an anxiety disorder. Shana

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Palmieri, a licensed clinical social worker, senior vice president of Behavioral Health and co-founder of Xferall, and FELTG Instructor, shared several tips for coping with pandemic-related stress in this newsletter a couple of months ago. Read that article and take it seriously. Personally, I've significantly reduced my social media time and rely on only a few reputable sources for pandemic-related news. That has made a huge difference. As Shana said: "We all must do our part to stop the spread of COVID-19 and engage in self-care to keep ourselves and our communities physically and emotionally healthy during these challenging times."

Next step: Recognize that there is a mental health crisis in America and the COVID-19 pandemic is having a serious negative impact on that crisis. A vaccine, herd immunity, or a flattened curve may signal a close end to the pandemic, but the nation's mental health crisis will still be here.

With employees' return to work comes your responsibility to accommodate. Shana and FELTG President Deborah Hopkins will discuss accommodations for all behavioral health issues on the first day of Emerging Issues Week, which runs July 20-24. Some of the simple accommodations for stress are:

- Allow for longer or more frequent breaks.
- Provide additional time to learn new task or skills.
- Allow flexible leave for counseling/ therapy.
- Consider more frequent meetings with supervisor.
- Provide stress-reduction programs through Human Resources or EAP services.

Lastly, communicate. When sharing plans for workplace reopening, provide facts. The return to work should follow a well-crafted plan with few to no surprises. And be honest. There are still nearly 1,000 deaths a day due to COVID-19, and the number of cases continues to rise. Ignoring the reality of the moment will only exacerbate stress.

Managing this mental health crisis in the workplace will be one of several topics discussed during the encore presentation of Federal Workplace Challenges in a COVID-19 World: Returning to Work During a Pandemic to be held on June 29. Shana and FELTG Instructor Ann Boehm will also cover telework, leave and flexible work schedules, medical testing, employees who blow the whistle about COVID-19 related issues, reasonable accommodation, and everything else you'll need to consider as you attempt to return the workplace to some semblance of normalcy. Gephart@FELTG.com

REASONABLE ACCOMMODATION WEBINAR SERIES

The Americans with Disabilities Amendments Act is more than 10 years old, yet some agencies are *still* following outdated procedures that are not compliant with the law. The reasonable accommodation process is complex. The best way to provide accommodations for people who are entitled is to follow the appropriate steps, in proper order.

Updated for 2020, FELTG proudly presents a five-part series on reasonable accommodation in the Federal workplace, covering everything from the basics of the law to challenges such as providing accommodations to teleworkers. And you can hear directly from a former EEOC Chief AJ.

Attend one session or attend them all.

July 30 – Reasonable Accommodation: The Law, the Challenges & Solutions

August 6 – Reasonable Accommodation: A Focus on Qualified Individuals, Essential Functions and Undue Hardship

August 13 – Telework as a Reasonable Accommodation: When to Say "Yes" and When to Say "No"

August 20 – Hear it from a Judge: The Reasonable Accommodation Mistakes Agencies Make

August 27 – Understanding Religious Accommodations: How They're Different from Disability Accommodations

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