



# Federal Employment Law Training Group

Teaching the Law of the Federal Workplace

FELTG Newsletter

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## Maybe, Hopefully, Possibly ... or Wishful Thinking?



A few days ago, President Biden announced his intent to nominate Tristan Leavitt to the third and final vacancy at the Merit Systems Protection

Board. Leavitt has [worked at the MSPB](#) for years and has been running the place since Mark Robbins' term expired in early 2019. Now, here's hoping that the Senate will do what they failed to do in the last Administration – vote and confirm these three pending members so that the backlog of around 3,500 Petitions for Review can finally start to be processed.

September is in full swing and we are looking forward to the end-of-FY virtual event [Federal Workplace 2021: Accountability, Challenges and Trends](#). With 16 short sessions over the course of the week tackling the topics most important to your agency in the coming months, there's a place for everyone. Attend whatever sessions you prefer, from one to all. We can't wait to have you join us.

This month's top story is, of course, about the new vaccine mandate (check out this new [FedUpward podcast](#) on the topic), but also see articles on pro-union leadership, workplace investigations and more.

Take care,

Deborah J. Hopkins, FELTG President

## UPCOMING FELTG VIRTUAL TRAINING

**EEOC Law Week**  
September 20-24

**Federal Workplace 2021: Accountability, Challenges, and Trends**  
September 27-October 1

**Conducting Effective Harassment Investigations**  
October 5-7

**FLRA Law Week**  
October 18

**Nondiscriminatory Hiring in the Federal Workplace: Advancing Diversity, Equity, Inclusion and Accessibility**  
October 26

**Workplace Investigations Week**  
December 6-10

**Successful Hiring: Effective Techniques for Interviewing and Reference Checking**  
December 7

**UnCivil Servant: Holding Employees Accountable for Performance and Conduct**  
February 9-10, 2022

For the full list of virtual training events, visit the **FELTG Virtual Training Institute**. If you'd like to bring any of these classes to your agency – onsite or virtually – email [info@FELTG.com](mailto:info@FELTG.com)

*FELTG is an SBA-Certified Woman Owned Small Business that is dedicated to improving the quality and efficiency of the federal government's accountability systems, and promoting a diverse and inclusive civil service by providing high-quality and engaging training to the individuals who serve our country.*

***Now that Vaccines are Mandated for Federal Employees, Can You Ask an Employee to Provide Your Agency with a Copy of Their Vaccine Card?***

**By Deborah Hopkins**



Stories about falsified vaccination cards are now peppering my newsfeed, including government seizure of fake vaccine cards at the border, and highlights of people who got caught attempting to travel to Hawaii with fake vaccination cards in attempt to and avoid mandatory quarantine. The woman whose card said she received a “Maderna” vaccine and the father who presented with vaccine cards for his 5- and 6-year-old children – far too young to be eligible for the vaccine – are the most memorable.

FELTG readers are likely aware of President Biden’s Executive Order 14043 last week requiring all Federal employees to be vaccinated against COVID-19. (FELTG instructor Katie Atkinson and I recently discussed the new vaccine requirement on an episode of the [FedUpward podcast](#).)

This new EO reflects the administration’s increased push to get all eligible Americans vaccinated, and on Monday the White House set the vaccination deadline as November 22. The EO follows a July requirement that employees attest to their vaccination status, otherwise be mandated to weekly testing, limits on official travel, wearing face masks, and physically distancing, plus following other protocols the CDC recommends for unvaccinated people in the workplace,

These announcements on vaccine status naturally led to a question about whether agencies could require employees to submit actual *proof* of their vaccination, such as a copy of a vaccination card, rather than – or in addition to – filling out the standard attestation form.

While the Press Secretary last week also mentioned that individual agencies could choose to require employees to submit proof of vaccination, this conflicts with recently [updated guidance](#) from the Safer Federal Workforce Task Force (the Task Force):

**Q: Should agencies request documentation to verify an employee’s vaccination status?**

**A:** Agencies should not request documentation to verify an employee’s vaccination status. If the agency receives a good faith allegation that strongly suggests that an employee made a false statement on the Certification of Vaccination form, the agency may request documentation as part of its investigation into the alleged false statement. If an employee who has attested to being vaccinated exhibits symptoms of COVID-19 illness, the agency should apply its safety protocols, but this is not an appropriate reason to request documentation to verify an employee’s vaccination status.

Put another way, the only time an agency may request an employee’s vaccine certification card is if management has a reasonable belief that the employee has incorrectly or fraudulently completed the attestation form. Some examples of “good faith allegations” that could lend to reasonable belief include:

- Employee makes a social media post about refusing to be vaccinated
- A coworker reports that their colleague said they only had one dose of an mRNA vaccine
- An employee has recently recovered from Covid and believes that gives him immunity, and signs the attestation saying he is vaccinated
- A family member alerts the agency that the vaccine the employee received was not on the approved World Health Organization list

If the investigation turns up evidence that the employee has indeed incorrectly or fraudulently attested to vaccination status, that becomes a conduct issue. In its guidance, the Task Force also addressed this matter.

**Q: Are there penalties for providing false information on the vaccination attestation form?**

**A:** Federal employees who make a false statement on the Certification of Vaccination form could be subject to an adverse personnel action, up to and including removal from their position. It is also a Federal crime (18 U.S.C. § 1001) for anyone to provide false information on the form. Falsification could also affect continuing eligibility for access to classified information or for employment in a national security position under applicable adjudicative guidelines.

The Task Force will be releasing additional guidance on vaccination requirements later this week, and we'll be sure to keep you informed. In addition, we'll be dealing with this topic and more in the October 26 webinar [Post-Pandemic Accountability: Handling Employee Performance and Misconduct in a COVID-19 World](#). That webinar is the final session of the three-part series [Navigating the Return to the Federal Workplace](#), which begins October 12 and includes discussion on EEO issues related to vaccines, reasonable accommodation, and more. [Hopkins@FELTG.com](mailto:Hopkins@FELTG.com)

**Successfully Interviewing Witnesses With Mental, Behavioral Conditions**

The most unpredictable part of the workplace investigation is often conducting the interview, especially when the witness has a behavioral or mental health issue, or violent tendencies. Join Shana Palmieri, LCSW on October 21 for [Workplace Investigations: Successfully Interviewing Witnesses With Mental and Behavioral Conditions](#).

**The Good News: LR Statute Doesn't Say Unions are Always Right**

**By Ann Boehm**



In a recent training session, an attendee raised this scenario: “A political appointee is close friends with an agency union official, and we are pretty much being told to do whatever the union wants. Do you have any advice for how a labor relations specialist can effectively deal with this situation?”

Yes, in fact, I do. And I'm going to start with a little history lesson.

The Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. Chapter 71, was passed as part of the Civil Service Reform Act of 1978. In 1978, Democrats held significant majorities in both the House of Representatives and the Senate. President Carter was a Democrat. President Joe Biden was a Democratic Senator at that time.

Historically, Democrats tend to be more pro-union than Republicans. If we presume that the leaders who created the Statute leaned pro-union, then we have to consider why they bothered to create a Statute that carefully outlines rights and obligations for both agencies and unions.

In section 7116, the Statute establishes what constitutes an unfair labor practice by an agency, and also what constitutes an unfair labor practice by a union. So, the Democratic leadership in 1978 acknowledged that unions are not always right. They may even commit unfair labor practices.

Section 7114(a)(2)(A) explains that the union has a right to be present at any “formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or

any personnel policy or practices or other general condition of employment.” Note that it does not say the union has a right to be present any time management meets with employees. Congress created limits.

The Statute established management rights, expressly providing in section 7106(a) management rights that are outside the duty to bargain with unions. There is also a whole section (section 7120) that establishes “Standards of conduct for labor organizations.”

I won't bore you by going through all the provisions of the Statute, but I promise you that it is full of limitations on what Federal employee labor unions can and cannot do. The Statute, created by Democrats, does not say that unions can do whatever they want during Democratic administrations.

I acknowledge that this Administration is setting a pro-union tone. I read an article that called President Biden the most pro-union president since Lyndon Johnson. So, there's that. I also acknowledge that the last Administration was pretty darn anti-union.

There is a shift going on here. But it does not mean that agencies must do whatever the union wants.

My advice, then, to those of you who may be dealing with a scenario like the class attendee is this:

Educate the leadership. Explain that the Statute guides all things Federal sector labor relations. Congress did find in 1978 that unions are in the public interest (section 7101(a)). But in so finding, Congress also stated this (section 7101(b)):

“It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The

provisions of this chapter should be interpreted in a manner *consistent with the requirement of an effective and efficient Government.*” (emphasis added)

Keep that language handy. Sometimes unions have good ideas, and they can help employees and agencies work efficiently on behalf of the American people. When they do not contribute to an effective and efficient Government, they are not doing what the 1978 Democratic leadership intended. Make the leaders aware. And remember, you have a lovely guidebook that does not care about the political party in charge – the Statute. That's good news. [Boehm@FELTG.com](mailto:Boehm@FELTG.com)

### **NEW WEBINAR SERIES!**

#### **NAVIGATING THE RETURN TO THE FEDERAL WORKPLACE**

Between the delta variant sweeping most of the country, the administration's new mandate (via Executive Order) that all Federal employees be vaccinated, and the general challenge of managing a hybrid workforce, the long-awaited mass return of Federal employees to the physical workspace is going to be anything but easy.

Let FELTG guide the way. Our three-part [Navigating the Return to the Federal Workplace](#) webinar series will answer all of your questions, and more, including:

- Where do you store information about employee vaccination status?
- Are there any religious exemptions for those who refuse to get vaccinated?
- How do disabilities intersect with the vaccination requirement?
- How do you discipline an employee for lying on his attestation of vaccination?
- Is failure to comply with a COVID-19 test a performance or conduct issue?

Click [here](#) to get more information on this new webinar series, which starts on October 12.

## ***Tools, Techniques Needed: Conducting Investigations When Trauma is Involved*** **By Shana Palmieri, LCSW**



The goal of Federal workplace investigations is to collect information in an objective manner through a series of techniques that provides information to uncover the 'truth,' allowing the agency to make appropriate decisions and actions. Unfortunately, the human mind and memory is tricky business. Since the 1960s, social scientists have produced numerous studies that demonstrate eye-witness testimony and memory are unreliable.

To make matters more complicated, memory is formed and stored differently in individuals under extreme stress from trauma. To conduct proper investigations, it is pertinent to understand the underpinnings of memory retrieval and have a toolkit of evidence-based techniques that will allow the investigator to obtain accurate, reliable information. **[Editor's note:** Shana will be a presenter during FELTG's upcoming Workplace Investigations Week (December 6-10) and will share guidance on interviewing witnesses who have experienced trauma, de-escalating emotionally charged interviews, and more during *Conducting the Investigation, Part I* on December 8.]

Memory includes three primary processes:

**Encoding.** Individuals receive information based on what they see (visual), hear (acoustic), and understand (semantic). The brain then encodes the information deemed important and lets go of what it considers less important information.

**Storage.** The brain takes these selected details and consolidates them into a memory in the brain based on the details selected from the encoding process combined with our current knowledge to reconstruct what we 'think' happened in the past.

**Retrieval.** Retrieval involves the recall of old memories to form a narrative of past events and our recollection of what we 'think' happened. People are only able to retrieve a portion of their actual memories, and these memories when retrieved are combined with additional memories, events, and beliefs that have occurred since the initial memory was consolidated. What this means is that when we retrieve a memory, we are not retrieving the initial memory that was encoded and consolidated, instead we are retrieving a memory that has been reconstructed and changed over time.

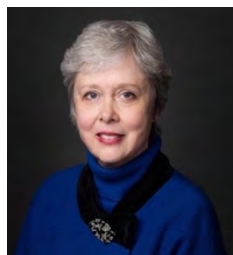
Memory systems in humans are not like replaying a video or audio recording that gives us a play-by-play of the exact details that occurred. Rather, the human memory selects what it believes the key factors are to encode, then uses current beliefs to consolidate a narrative that changes over time. This creates problems for obtaining an objective account of what occurred in the past built on a memory-based interview.

Add in other complicating factors, such as trauma, to impact the functioning on the memory systems, and the interview process becomes more challenging. Due to the activation of the stress response system, memories are often fragmented. Additionally, the type of memories the brain decides to encode differ than that of individuals not under extreme stress. And, finally, individuals under extreme stress as a result of trauma often do not store memories in a chronological fashion, making the retrieval of the incident difficult for the purposes of an investigation.

Therefore, specific investigative tools and interview techniques need to be applied when working with individuals that are impacted from extreme stress or trauma.

These techniques allow investigators to ask questions in a way that aligns with the way individuals store, retrieve and process information, allowing for a more objective investigation. [Info@FELTG.com](mailto:Info@FELTG.com)

***Establishing Conduct Expectations:  
A Sample Policy Part II***  
By Barbara Haga



This month, we tackle a few other aspects of the work and conduct expectations that I began in last month's [article](#), in which I tackled work schedules, attendance and other related

matters.

**INTERNAL WORK REQUIREMENTS.** The following standards relate to how work gets done within our organization.

Standards for Work Assignments:

Due Dates: Certain assignments have specific due dates. Sometimes these are recurring items which have due dates such as monthly reports. In addition, various actions and projects will have due dates which may be either immediate or months in advance. Employees are expected to comply with due dates unless an extension has been given for good cause. If there are problems meeting a deadline, you are expected to notify your supervisor sufficiently in advance for alternative arrangements to be implemented to meet the deadline.

Priorities. Depending on the grade of your position, you may be responsible for setting work priorities or that information may come from your supervisor. You are expected to ensure that work is appropriately prioritized within guidelines and to raise issues regarding any competing priorities with your supervisor in advance to ensure timely completion.

Compliance with Directives. In some cases, work assignments are made with specific instructions or directives that explain how the work will be performed. Employees are expected to follow such protocols, directives, or procedures where they have been provided. This is not intended to limit

opportunities for improving procedures or adapting to new conditions, but instead to ensure that supervisors are made aware of proposed adjustments in advance.

Files and Records: Any files or records that you develop in the course of your work are the property of the agency.

Sharing Information within the Unit: Staff meetings provide an opportunity for sharing information regarding our organization and our work and are a key ingredient to ensure that everyone on the team is aware of developments and changes that affect us.

Regular attendance at staff meetings is expected. In the event that there is a conflict with another meeting or work commitment, you are expected to notify your supervisor to discuss the conflict prior to the day of the staff meeting.

During staff meetings, you are expected to fully participate and to contribute to the information-sharing within the group. You should prepare as necessary to be ready to engage fully in discussions and to contribute well-thought-out suggestions.

(If status reports are required, include information on due dates/content here). Status reports ensure that your supervisor has up to date information on key parts of each employee's work that then enables the supervisor to respond when issues arise from senior officials and customers.

Communications:

E-mail: If you receive an e-mail requesting information or assistance, you are expected to respond within one business day of receipt. If you are not able to satisfy the request within one day, you will acknowledge the request and include an estimate of when you will be able to satisfy the request.

If you are going to be out of the office, you will utilize the auto-reply on your e-mail to alert others to the fact that you will be out

for a specific period of time. Your auto-reply message is also to provide an alternate point of contact(s) who is providing coverage in your absence.

Telephone: If you receive a phone call requesting information or assistance, you are expected to respond within one business day of receipt. If you are not able to satisfy the request within one day, you will return the call and provide the caller an estimate of when you will be able to satisfy the request.

If you are going to be out of the office, you will change your greeting to alert others to the fact that you will be out for a specific period of time. Your message is to include an alternate point of contact(s) who is providing coverage in your absence.

Personal Telephone Calls and E-mails. Work time is to be spent performing work activities. Reasonable time for short check-in calls with family or making calls or sending e-mails for personal business that cannot be accomplished outside of work hours are permitted.

Required Training. Employees whose jobs have specific training requirements are expected to complete such training by any established deadline. Training may range from annual IT Security or Ethics Training to continuing education requirements for certain position. Once notified of a due date for training it comes your responsibility to ensure that you comply. Multiple reminders should not be expected. Failure to complete required training on time is grounds for disciplinary action.

Licenses and Certifications. Some jobs include requirements for licenses and certifications. It is incumbent on you to ensure that any continuing education is completed in a timely manner and that any administrative requirements to maintain such a license, certification, or membership are met. Failure to meet these conditions of employment may be grounds for removal.

**ON AND OFF-DUTY BEHAVIOR.** Federal employees are accountable for behavior both on and off-duty. Off-duty behavior may be a basis for employment action if there is a connection between the behavior and the position.

Off-duty behavior such as egregious sexual misconduct may be grounds for dismissal. Other types of specific off-duty misconduct could impart an employee in a particular type of position or job; for example, an employee whose job requires a license to drive who loses that license because of a DUI conviction may be removed because he/she doesn't meet a condition of holding the job. Similarly, an attorney who loses membership in the bar would no longer qualify for that position.

Certain jobs may have more stringent requirements than others. Police and investigator positions, for example, are generally held to higher standards since it is their responsibility to enforce laws, testify in legal proceedings, etc. Jobs that are designated as highly sensitive or those who which require security clearances may be held to stricter rules regarding off-duty issues such as indebtedness. Supervisory jobs are also held to a higher standard. Haga@FELTG.com

### **Winning EEO Cases Through Summary Judgment**

During this 60-minute webinar on October 5, FELTG Instructor Ann Boehm will explain the importance of the Report of Investigation and thorough discovery, the benefits of motions for summary judgement (MSJs), and what to include in the MSJ to best represent your client and your case. Learn how to: identify when to file an MSJ; organize for the motion; and draft an effective motion that will withstand third-party scrutiny.

[Register now.](#)

***Be Careful What You Ask for  
– And How You Respond***  
By Michael Rhoads



I've always regarded Labor Relations like the old Rubik's Cube. There are a seemingly endless number of twists and turns before arriving at the final solution. I admire the tenacity of those who have made a career out of LR. It's not for the faint of heart, especially when engaged in "robust debate." And to make it even more interesting for those practicing LR in Federal agencies, the message from the top-down changes with each new Presidential administration.

**Permissive Bargaining**

Since President Biden revoked The Presidential Memorandum of October 11, 2019 (Executive Orders 13836, 13837, and 13839) in [Executive Order 14003](#), management has been asked to operate under a new set of bargaining rules. The Biden administration even set the tone by stating: "It is also the policy of the United States to encourage union organizing and collective bargaining."

Of particular note in EO 14003 is section 4. *Ensuring the Right to Engage in Collective Bargaining*. "The head of each agency subject to the provisions of chapter 71 of title 5, United States Code, shall elect to negotiate over the subjects set forth in [5 U.S.C. 7106\(b\)\(1\)](#) and shall instruct subordinate officials to do the same." This is a 180-degree turn from the previous administration, who said the agency "may not negotiate" over the subjects of 7106(b)(1).

OPM also issued a [memo](#) on March 5, 2021 in support of the topics covered in 7106(b)(1). "In order to implement the policies of the Executive Order, agencies shall agree to bargain over the substance of §7106(b)(1) subjects, whether at the union's request (e.g., midterm bargaining request)

or as the result of a proposed agency action (e.g., union responding to an agency notice of a pending change subject to collective bargaining).

**Requests for Information**

The new permissive bargaining sets the stage for new negotiations between management and the unions representing bargaining unit employees. During these negotiations, the union will most certainly request information from management. Requests for information can sometimes feel like the children's book *If You Give a Mouse a Cookie*: one request leads to another, and another, and another, ad infinitum. But no matter how many requests a union submits to management, they must demonstrate a particularized need for the information.

The types of information a union can request from management are covered in [5 USC 7114\(b\)\(4\)](#):

(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data—

(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining

If you're a labor relations specialist looking for best practices on how to negotiate in this new climate, look no further. Join my colleague, [Ann Boehm](#) on Friday, October 1, 2021 for 2 sessions [Permissive Bargaining](#) from 11:15-12:30 PM EDT, and [Requests for Information](#) from 1:30-2:45 PM EDT. And be sure to check out our other topics in our



upcoming end-of-FY virtual event [Federal Workplace 2021: Accountability, Challenges and Trends](#), which runs from September 27 – October 1.

As this fiscal year comes to a close, I wish everyone a productive September. Be safe, and remember, we're all in this together. [Rhoads@feltg.com](mailto:Rhoads@feltg.com)

**Well, Excu-u-use Me! Sometimes, Feds Say the Darndest Things**  
By Dan Gephart



Ever hear about the Federal employee who walked out of Whole Foods without paying for the two tacos in his hands? When stopped by security, he claimed he “thought the tacos were comped for Federal

employees.”

Or how about the Fed who paid for his family’s entire Disney vacation with his government credit card? It was an accident, he said. He meant to use his own card. Yes, sure, it was an accident when he paid for the flight. And again, when he paid for the hotel. And again, when he paid for the rental car.

But what if the taco-buying Fed really did think he was comped? I don’t know, maybe he missed his day of ethics training. Or what if the Disney vacationer’s personal credit card looked almost identical to his government card?

Sometimes an employee’s excuse for misconduct may sound as illogical as the concept to the Broadway show *Cats*. Before you laugh off the premise, though, give it some consideration. After all, the MSPB once reversed an employee’s removal for failing a drug test when his excuse was that his soon-to-be-ex-wife laced his cigar with marijuana. The ol’ “my wife put weed in my cigar” excuse? Come on! That sounds like

our drug-tested Fed was blowing smoke. But guess what? The evidence backed it up. After lacing the cigar, the wife called the employee’s supervisor and suggested her husband be drug-tested.

That evidence, however, was clearly missing for the IT specialist in *Hansen v. DHS*, No. 2017-2584 (Fed. Cir. Dec. 28, 2018). A random drug test revealed marijuana in his system and the agency proposed his removal for “positive test for illegal drug use— marijuana.”

The appellant claimed he unknowingly consumed drug-laced brownies at a party. Who hosted the party and secretly served pot brownies to unsuspecting guests? Well, the appellant didn’t actually “know” the host. In fact, he claimed, he didn’t even know the brownies were made with marijuana until days later. He said he never felt the effects of the marijuana and attributed what he did feel (mostly nauseous) to eating bratwurst.

The MSPB found that he failed to meet his burden of “showing such inadvertent ingestion” and affirmed his removal.

For more on *Hansen* and other similar cases, join FELTG President Deborah Hopkins, starting at 9:30 am ET on Thursday, September 30 for *High Times and Misdemeanors: Weed and the Federal Workplace*. If you’re looking for guidance on handling off-duty misbehavior in general, join FELTG Instructor Bob Woods for *Got Nexus? Accountability for Off-duty Conduct* on Tuesday, September 28, starting at 11:15 am ET. Both sessions are part of our [Federal Workplace 2021: Accountability, Challenges and Trends](#) event, which runs event runs September 27-October 1. Click [here](#) to find out more about this exciting annual event. [Gephart@FELTG.com](mailto:Gephart@FELTG.com)

**Ask FELTG**

*Do you have a question about Federal employment law? A hypothetical scenario for which you need guidance?*

[Ask FELTG.](#)

### ***What Happens if the EEO Director or Personnel Attorney is Named in an EEO Complaint?***

**By Deborah Hopkins**

Here's the scenario: A complainant files multiple EEO complaints including complaints against an attorney in the agency's Office of General Counsel and the agency's EEO Director. The complainant requests the attorney and the EEO Director to recuse themselves from the case. The GC and EEO Director happen to be the employees who handle most EEO matters and litigation for the agency in this particular region.

Because of her experience, the attorney would like to be involved in defending the agency against the complaints rather than create a firewall and pass this case off to a less-experienced attorney. And the EEO Director doesn't want to recuse because he believes there is no merit to the EEO complaint.

What should the agency do?

Ideally, the agency should have a conflict policy in place and an agreement with another region or even another agency to step in for the investigation and defense of complaints in situations like this. The EEOC issued a [report](#) last year with guidance on these conflict policies.

If the agency doesn't have a conflict policy in place now, the below case discusses the conflict issue and should encourage the agency to address this as soon as possible: *Katharine B. v. USPS*, EEOC App. No. 0120170444 (Dec. 7, 2018).

"In *Monroig*, the Commission held that permitting the Deputy General Counsel, one of the responding management officials, to attend the hearing and simultaneously act as agency representative would create

an inherent conflict of interest and tarnish other witnesses' testimony.

EEO Management Directive 110 (EEO MD-110) (Aug. 5, 2015) requires that there be distance between the fact-finding and defensive functions of the agency in order to enhance the credibility of the EEO office and the integrity of the EEO complaints process. EEO MD-110, Chapter 1, at § IV (Aug. 5, 2015). The Commission ruled that even if the Deputy General Counsel had testified before all other witnesses at the hearing, her presence would discourage other employees from testifying freely at the hearing.



The Commission noted that the Agency was well represented at the hearing despite the Deputy General Counsel's absence.

Accordingly, we find that a conflict of interest existed in the Agency's representation at [\*13] the hearing and that Complainant is entitled to a new hearing, in which S1 may not be involved as an Agency representative. See *Rabinowitz v. U.S. Postal Serv.*, EEOC Request No. 05930348 (Sept. 23, 1993) (officials involved in discrimination may not be involved in processing the complaint)." [bold added]

**Bottom line:** Take conflict allegations seriously. Find a way to recuse counsel or EEO officials who may have conflicts of interest.

Better yet, get ahead of these situations now by putting together a conflict policy, as recommended by the EEOC. It may not be something that arises often but being prepared for a conflict will benefit the agency in the long run. [Hopkins@FELTG.com](mailto:Hopkins@FELTG.com)