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

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Quorum Sworn in at MSPB on Day 1,883

Quorum Restored!

Over the past several days, we at FELTG have been celebrating the fact that after more than five years without a quorum, the Merit Systems Protection Board now has two out of three members sworn in. In a very strange coincidence on numbers, the members took their places on the 1,883rd day since the Board last had a quorum – and the Board traces its history back to 1883 and the *Pendleton Act*.

Vice Chair and Acting Chair Raymond Limon and Member Tristan Leavitt have already gotten to work tackling the backlog of 3,600-plus cases that have been stacking up since 2016. They definitely have their work cut out for them, but since both have vast experience in the MSPB world, we anticipate cases will start coming any day now.

Because the Board is back, we invite you to the newly updated virtual class MSPB Law Week, March 28-April 1, or for the just-added webinar Getting Back on Board: An MSPB Case Law Update, on April 20, where we'll cover the first decisions coming out of the MSPB.

This month, we discuss topics including lack of candor, union representation in meetings, comp damages, supervisory hurdles, and more. Read and enjoy.

Take care,

Deborah J. Hopkins, FELTG President

UPCOMING FELTG VIRTUAL TRAINING

Nondiscriminatory Hiring in the Federal Workplace: Advancing Diversity, Equity, Inclusion and Accessibility
March 16

MSPB Law Week
March 28-April 1

EEOC Law Week
April 4-8

Navigating the Realities of Employee Stress, Anxiety, and PTSD in the Post-pandemic Workplace
April 13

Emerging Issues in Federal Employment Law
April 26-29

Conducting Effective Harassment Investigations
May 3-5

FLRA Law Week
May 9-13

UnCivil Servant: Holding Employees Accountable for Performance and Conduct
May 24-25

Promoting Diversity, Enforcing Protections for LGBTQ Employees
June 9

Absence, Leave Abuse & Medical Issues Week
June 13-17

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.

The Good News: The Union Doesn't Get to Attend Every Meeting
By Ann Boehm

One of the most frequent labor relations questions I get from supervisors is, "Does the union get to attend meetings between me and an individual bargaining unit employee?"

The answer to that question is, "It depends." And I would add, "Probably not as often as bargaining unit employees think."

Many union stewards, bargaining unit employees, and supervisors do not understand when a union representative may be present for a meeting between management and bargaining unit employees. The statutory guidance on meetings is in 5 U.S.C. § 7114(a)(2). There are two different types of meetings that the union may attend – formal discussions (§ 7114(a)(2)(A)), and *Weingarten* meetings (§ 7114(a)(2)(B)).

This article focuses on the *Weingarten* right. In my experience, people tend to believe the *Weingarten* right to representation arises more often than it does. Let me try to explain when the right does arise.

To trigger the *Weingarten* right, there has to be an investigation by the agency. That typically means a misconduct investigation. If there's no investigation occurring, you can pretty much stop there — no right to a union representative.

If there is an investigation, the next consideration is whether the representative of the agency is *examining* a bargaining unit employee, or to put it another way, asking questions. No questions, no right to representation.

But wait, there's more. If there is an investigation, and there is an examination of a bargaining unit employee by an agency representative, the employee still has to "reasonably believe" that disciplinary action against the employee could result from the examination in order for the employee to have a right to union representation in that meeting. (You still with me??) If the employee is the subject of the investigation, it is highly likely that "reasonable belief" requirement will be met. However, if the employee being questioned is just one of many witnesses, the requirement will not be met. No reasonable fear of disciplinary action, no right to union representation.

And that's not all. The employee has to request a union representative (unless the collective bargaining agreement specifies that the agency representative has to inform the employee of their right to representation). The union cannot assert the *Weingarten* right for the employee. It's up to the employee to seek the representation. No request for representation, no right to representation.

I'm not done yet. If those are the triggers for the *Weingarten* right, what types of meetings are NOT going to trigger the right?

Our friends at the FLRA highlight a few specific types of non-*Weingarten* meetings in the Office of the General Counsel's *Guidance on Meetings* (Sept. 1, 2015).

> The Authority has routinely held that performance counseling sessions and other meetings intended to convey concerns over the quality or timeliness of an employee's work performance do not constitute "examinations" within the meaning of section 7114(a)(2)(B) where they are not designed to elicit information from the employee, but rather to inform and counsel the employee regarding performance deficiencies. It has reached the same conclusion regarding meetings to announce disciplinary actions, as well as meetings conducted for the purpose of giving the employee an assignment

> or a test or as part of a non-disciplinary classification desk audit.

So, there you have it. I hope this helps you understand the parameters of the *Weingarten* right. The union doesn't get to attend every meeting. That's Good News! (*Stay tuned*. Next month I'll cover formal discussions.) Boehm@FELTG.com

EMERGING ISSUES IN FEDERAL EMPLOYMENT LAW

FELTG's four-day virtual training event returns for a third straight year. Sessions are 75 minutes long. You can earn CLE credits and EEO refresher credits.

Tuesday April 26: The New Hybrid Workplace

Sessions: *Holding Employees Accountable Regardless of Their Work Location*; *What to Do When Harassment Occurs Outside the Building*; *The New World of Work: Understanding Expectations, Aspirations, and Opportunities*

Wednesday, April 27: The Ever-Changing Law

Sessions: *Santos, OPM, and Performance Accountability: What Gives?; What's New in Leave 2022?; Federal Employment Law Update: Significant Cases and Developments*

Thursday, April 28: Post-COVID EEO Challenges

Sessions: *The Widening Net of Reprisal Discrimination*; *Telework As a Reasonable Accommodation: When Employees Return to the Workplace*; *When Medical Issues Cause Performance and Misconduct Problems*

Friday, April 29: Labor Relations Spotlight

Sessions: *Representation Decisions Under FLRA*; *What I Learned as a Chief Management Negotiator*

Register now for any individual sessions, days, or the whole event.

Q&A About Performance Demonstration Periods, Otherwise Known as PIPs

By Deborah J. Hopkins

As we eagerly await the first decisions from the newly seated MSPB quorum, we have also just passed the one-year anniversary of the Federal Circuit decision *Santos v. NASA*, that made us rethink everything we thought we knew about implementing the employee performance demonstration period, what we at FELTG call a DP, or as many of your agencies might call it, the PIP.

Over the past year, we've received numerous questions about PIPs. Below are a few questions with our FELTG answers.

Q: A supervisor is noticing a lot of performance issues with an employee. Our agency is in the performance documentation period right now and our performance cycle ends on 8/31. Is the performance rating in September a good time to rate as Unacceptable and announce the PIP, or should it be done before then?

A: The supervisor should implement a PIP now, and not wait until annual rating time. There's no requirement that the agency wait until a pre-determined rating time to implement a PIP; as soon as the supervisor can document substantial evidence of the unacceptable performance, then OPM regulations say it's PIP time.

> At **any time** during the performance appraisal cycle that an employee's performance is determined to be unacceptable in one or more critical elements, the agency shall notify the employee of the critical element(s) for which performance is unacceptable.

5 CFR § 432.104

Waiting until the end of the appraisal period does nobody any favors, and a Level 1 rating is not required before an agency may implement a PIP. According to *Santos*, the agency need only document unacceptable performance that caused the supervisor to implement the PIP.

Q: How concrete do performance standards have to be, as well as expectations communicated on a PIP, in order to support any final decision to remove?

A: The agency has to have substantial evidence the employee performed unacceptable before, and during, the PIP, on the critical element in question. The expectations communicated depend on the employee's job level and type; the higher the grade level, the less objective the standards and expectations need to be. See, e.g., *Graham v. Air Force,* 46 MSPR 227 (1990).

ASK FELTG
Do you have a question about Federal employment law? Ask FELTG.

Q: While *Santos* sets out the requirement that agencies have substantial evidence of unacceptable performance before implementing a PIP, OPM's proposed regulations disagree with that assessment. What happens next?

A: Well, a couple of things. First, OPM's regs were proposed and not final, so we'll wait to see what the final rule says. Second, the MSPB members will probably have a few things to say about *Santos*. Until we get their take, we won't speculate – but we'll keep you posted as soon as we know anything.

For more on employee performance challenges, join us for the virtual MSPB Law Week March 28-April 1, or check out the upcoming webinar The Roller Coaster Employee: Managing Up-and-Down Performance on May 10, or join us in person in Norfolk for Advanced Employee Relations August 2-4. Hopkins@FELTG.com

Non-Pecuniary Damages: How Much Is Enough?
By Michael Rhoads

Compensatory damages are available in cases of intentional discrimination under Title VII and the Rehabilitation Act, 42 USC 1981a(b), as well as the Genetic Information Nondiscrimination Act (GINA). While past pecuniary damages (do you have a receipt for that?) and future pecuniary loss (I'm going to have to keep paying how much?!?) are relatively cut and dried, non-pecuniary damages (emotional harm, or pain and suffering) are less certain to predict. Looking at a couple of the EEOC's recent cases on non-pecuniary damages is a good reminder that what your agency might award, and what the EEOC might award on appeal, could vary greatly.

Bill A. v. U.S. Postal Service, EEOC Appeal No. 2020003332 (June 3, 2021).

In 2017, the complainant was diagnosed with major depressive disorder, and suffered from anxiety and insomnia. He began to take medication. The agency sent him home, refused to allow him to come to work, and suspended him, among other things. The complainant was separated from the agency effective April 2019. He claimed that due to the agency's actions, he suffered from gastrointestinal issues, hearing voices, and suicidal thoughts. The complainant had filed two previous complaints, and amended his second complaint, which is addressed here. As a part of the amendment to the second complaint, the complainant's wife provided an affidavit confirming the complainant's symptoms had worsened since the complainant was separated from the agency.

In a prior EEO complaint, the agency awarded $85,000 to the complainant. The agency took this amount into consideration when issuing $2,000 in non-pecuniary

damages related to the amended complaint. The agency concluded the complainant's conditions were "mostly pre-existing" and the prior damages paid by the agency covered these conditions.

The Commission modified the final agency decision from $2,000 to $35,000, finding the agency fell short on the reasonable accommodation process when it failed to consider reassignment as a reasonable accommodation for the complainant's disability. The Commission opined, "The Agency's suggestion that Complainant's claim for non-pecuniary damages consisted of little more than speculation is offensive in light of …" the Commission's previous decision awarding the Complainant $85,000. The Commission decided the first payment should not inform how much the second payment should be, considering each decision covered two different time periods.

It is also important to note that in non-pecuniary damages cases, the complainant does not have to present medical evidence. The complainant does bear the burden of proof, but in this case, he submitted an affidavit from his wife to prove his claim. Also, the agency did not refute his evidence in the first case. The Commission took this into consideration when deciding on the appeal.

Stanton S. v. U.S. Postal Service, EEOC Appeal No. 2019004097 (Apr. 15, 2021).

In this case, the complainant requested a religious accommodation. His religion did not permit him to work on Sundays. However, management ordered him to be trained as a backup to work on Sundays if the need would arise. Training for the role took place on Sundays. Management issued two removal notices when the complainant missed three training dates. The EEOC ordered the agency to investigate the claims. The agency found no discrimination in its final decision. On appeal, the Commission found the complainant established a prima facie case of religious discrimination because the agency could not show undue hardship, and sent the case back to the agency to determine the damages to be paid to the Complainant. The Agency estimated the complainant was off work for approximately four months and awarded him $10,000. The complainant appealed the agency's compensatory damages.

In its decision, the Commission cited: "Complainant has the burden of proving the existence, nature and severity of the alleged emotional harm." *Man H. v. Dept. of Homeland Security*, EEOC Appeal No. 0120161218 (May 2, 2017). The complainant may report as evidence emotional harm, such as stress, anxiety, interference with a firmly held religious belief, etc. However, the lack of supporting evidence may affect the amount of damages related to a case. Also, non-pecuniary damages are meant to repair the damage caused by the harm to the complainant – not to punish the agency. The Commission cited three similarly situated cases, and accordingly raised the amount of the non-pecuniary damages to $30,000.

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For expert advice on how to handle compensatory damages, join Bob Woods on Thursday, March 24 from 1 – 2 pm ET for Damages and Remedies in Federal Sector EEO Cases. One hour of your time could save your agency tens of thousands of dollars in compensatory damages! Stay safe, and remember, we're all in this together. Rhoads@FELTG.com

MSPB Law Week

The Board is back! It's time to sharpen your MSPB skills and freshen up your knowledge. In the five years the MSPB sat without a quorum, the civil service world, particularly as it applies to employee relations, has not stood still.

Join us March 28 – April 1 for FELTG's updated MSPB Law Week. The training will run from 12 – 4 pm ET each day.

Register now.

A Head-shaking Tale About Lack of Candor
By Barbara Haga

Last month, I wrote about the case of *Freeland v. Department of Homeland Security*, No. 2020-1344 (Fed. Cir. Aug. 7, 2020). Freeland was a supervisory human resources specialist who was hired by DHS after resigning from his Army job under shaky circumstances. Most of what I covered last time centered on how exactly DHS hired someone with this kind of background. After all, we in the HR Office should be pretty good at recognizing the signs of trouble and knowing how to check references and ask good questions about past employment.

Let's look at the lack of candor charge in Freeland's removal case.

To recap: DHS brought Freeland to work on Sept. 20, 2015. He was removed in 2017 from the position of supervisory human resources specialist in the Recruitment and Placement Branch of a DHS Human Resources Operations Center. Prior to working for DHS, Freeland held the same type of position at an Army Civilian Human Resources organization. He resigned in May 2015 after he was issued a proposed 14-day suspension for negligent performance of duties. At the time of his resignation, he was also the subject of a workplace sexual harassment investigation.

After the tentative DHS offer, Freeland was required to complete an *SF-85P, Questionnaire for Public Trust Positions*. Question 12 of the form asks: Has any of the following happened to you in the last 7 years?

1. Fired from a job
2. Quit a job after being told you'd be fired
3. Left a job by mutual agreement following allegations of misconduct
4. Left a job by mutual agreement following allegations of unsatisfactory performance
5. Left a job for other reasons under unfavorable circumstances

Freeland completed and signed his SF-85P form on two occasions, once on July 18, 2015, and again on Sept. 23, 2015. In both instances, he answered "no" to this question without providing any further details in the corresponding comments section.

(Note: The SF-85P was revised in 2017. The current version of the form has these questions in Section 13, not 12, and the questions asked are different.)

The Investigation

Roughly four months after Freeland completed the form the second time, he was interviewed by an OPM investigator. The investigator asked about the situation surrounding the departure from his Army position. Freeland initially denied any issues with his Army employer until he was directly confronted by the interviewer who had information that the Army had proposed a disciplinary action against him. Freeland also initially denied the sexual harassment allegation until he was directly confronted by the interviewer with the allegation. OPM issued its findings to the DHS Office of Security and Integrity, Investigations Division (OSI). OSI noted that OPM rated it a D-issue, indicating that a significant impediment existed for obtaining background clearance. On Aug.18, 2016, OSI sent its review and excerpts from the OPM background investigation to the Chief of the HROC.

One year later, DHS issued a notice of proposed removal based on lack of candor. The charge was supported by three specifications. Two of the specifications were based upon the responses on the two SF-85P forms he completed. The third specification was based on the follow-up interview when Freeland initially denied having any problems or issues in his prior Army employment.

I am biting my tongue. I want to write about why it took one year to get this person off the rolls. He was a supervisor. He was a staffing specialist. Based on the third specification, he was not honest in responding about the circumstances of his departure from the Army. He would have signed an OF-306 as a new employee which gave permission for DHS to go directly to the Army to get the information. According to the Federal Circuit decision, Freeland was placed on a probationary period when hired by DHS. The probation would have ended on Sept. 19, 2016. The DHS OSI turned over its report on August 16, 2016.

Why did they not terminate him? Pre-appointment procedures would have required notice and a "reasonable" period of time to respond, but that's all. (See 5 CFR 315.805(b)). I'm going to let that go, though, and end with what Freeland said in his defense. That's the unbelievable part.

Freeland's Response?

Freeland argued that he had finished his "conditional" period with DHS, ostensibly meaning that agency couldn't take action on the information about his Army employment. The Court found that Freeland had completed his one-year probationary period, but that he confused that with the requirement of being subject to a background investigation. (One would expect that a supervisory staffing specialist would understand these things.)

The truly surprising arguments were these:

Freeland stated that his incorrect answer on the SF-85Ps was not done for "personal gain." The Court dealt with this as a *Douglas* factor issue and upheld the AJ's determination. The proposed removal notice stated: "You were aware that the prior Proposed Discipline and sexual harassment investigation would interfere with your recruitment and placement into the supervisory position that you currently hold."

Freeland also argued "that the Board disregarded that he did not take his ethics training until after the dates on which he completed iterations of the SF-85P — therefore, he was not on notice that he had to be forthcoming on his SF-85P form." The Court pointed out that the form specifically required certification that the responses were "true, complete and correct."

Wow. A supervisor who receives and handles official documents with applicant and employee signatures all day long doesn't know that one needs to be truthful without the ethics training. I'm still offended when I read this. When you have a few minutes, look at the case. Maybe you will be shaking your head, too. Haga@FELTG.com

The Federal Supervisor's Workshop: Building the Best Toolkit for Managing Today's Workforce

FELTG's annual supervisory training event returns with comprehensive training that expands upon legal principles to provide you with the necessary tools and best practices to manage the agency workplace effectively and efficiently.

The monthly 60-minute webinars provide the legal foundation for managing distinct situations. Register now for one, more, or all the remaining sessions:

April 12 - Insubordinate Employee? Don't Mess With the Wrong Elements

May 10 - The Roller Coaster Employee: Managing Up-and-Down Performance

June 14 - Reasonable Accommodation: The Interactive Process

July 12 - Effectively Handling Sick Leave and Abuse

August 9 - The New Hostile Work Environment

August 23 - Do I Need to Invite the Union to this Meeting?

Supervisors: To Avoid a Hurdle, Think of Wordle
By Dan Gephart

If you've been on email, text, or social media in the past couple of months, you've undoubtedly seen those ubiquitous green, yellow, and black squares. Maybe someone you know is obsessed with Wordle or, maybe you're the one obsessed. Or, as it is in my family, everyone is obsessed.

Not familiar with Wordle? It's a free daily Internet-based game where you get six guesses to figure out a five-letter word. On each turn, you guess a word. A space turns green if the letter is that exact location in the solution, yellow if the letter is in the word but in a different spot, and black if the letter is not in the word at all.

The rules of Wordle and the strategies developed to succeed at it can be applied to numerous situations, including those faced by Federal supervisors.

Your first move is important. Most Wordle players have a favorite first word. For some, it's RATES, STARE, or another word with the common letters. Others prefer words like AUDIO or ADIEU so they can determine immediately which vowels are in the word.

Supervisors: First moves set the tone in the workplace, too. Your actions (or lack thereof) when first faced with an employee's poor performance or misconduct send a strong message and set a precedent.

It's not a secret that accountability is a huge problem in the Federal sector. Each year, the Federal Employee Viewpoint Survey asks employees whether they agree with this statement: *In my work unit, steps are taken to deal with a poor performer who cannot or will not improve.* Only 42 percent of employees agreed with this statement in the most recent FEVS. Granted, that percentage has risen in recent years. But it's still a sad statement that 58 percent of employees think supervisors don't do enough to hold unacceptable performers accountable.

The confidence in managers to take appropriate action on misconduct isn't much higher. When those problems repeat themselves later (and oh yes, they will), you will curse yourself for not acting earlier.

At FELTG, we've heard dozens of stories about managers who overlooked misconduct for months then suddenly decide to address with a suspension or removal. Remember that thing called progressive discipline? If you fail to act on conduct or performance problems, those problems may have well never happened, and you're starting from scratch.

Don't let that happen to you. Join us on the afternoons of May 24-25 for our flagship program UnCivil Servant: Holding Employees Accountable for Performance and Conduct.

Old-fashioned pen and paper are still useful. I dislike staring at a phone screen for a long time. However, Wordle sometimes gets particularly challenging. So, I pull out a pen and paper to figure it out. Sometimes seeing the letters in a different format helps to jostle free some solutions.

Supervisors: Going old school will help you jostle free some memories. As FELTG President Deborah Hopkins has pointed out numerous times during sessions and on this website, the cheapest but most valuable investment you can make is the purchase of a notebook.

"It might seem obvious, yet many supervisors don't take the time to make contemporaneous notes," Deb wrote. "You might never need them, but you'll be very glad you have them if the situation calls for evidence in addition to your testimony."

Everyone plays by the same rules. Not only is there only one Wordle per day, but it's also the same puzzle for everyone. This is a key to Wordle's success.

Supervisors: It's important that agency rules and expectations are shared clearly with everyone. Remember, it's the agency's burden when imposing discipline to prove not only that the rule exists, but that the employee knew (or should have known) the rule.

There are several ways to inform employees of a rule, such as bringing it up in a staff meeting, posting to a bulletin board, sending out an email, or covering it during a training session. Or a combination of these options, with the follow-up email ensuring it reaches all employees.

Watch your language. When the *New York Times* purchased Wordle recently, a newspaper representative promised few, if any, changes with one exception: The *Times* would be removing offensive words from the game. This includes curse words, as well as sexist and racist terms. For those who like to type the kind of five-letter NSFW terms that make middle schoolers giggle, there's always Lewdle and Swerdle.

Supervisors: Unless you're involved in a "robust" discussion with the union, you will be held accountable for your speech. Words matter. And we're not talking swear words. Beware of biased language. That would be words or phrases that demean or exclude people because of age, sex, race, ethnicity, religion, disability, or other categories.

If you're scoffing to yourself about "censorship" or "political correctness," get yourself to one or more of FELTG's Diversity, Equity, Inclusion, and Accessibility classes. There's still time to register for today's Nondiscriminatory Hiring in the Federal Workplace: Advancing Diversity, Equity, Inclusion, and Accessibility or Promoting Diversity, Enforcing Protections for LGBTQ Employees on June 9.

Don't try something that you already know doesn't work. The black squares in Wordle denote that the letter you selected is not in the word. So why use another word with that letter again?

Supervisors: The best thing about mistakes is that you learn from them. But, how many times have you found yourself about to follow the same darn process you followed unsuccessfully before?

Here's an even safer option: Learn from other people's mistakes. In FELTG training, we like to share mistakes supervisors have made either via our instructors' own experiences or through legal cases. Perfect example: Reasonable Accommodation: The Mistakes Agencies Make, a 60-minute webinar held on April 21.

You don't get do-overs. Wordle only offers one puzzle per day. If you fail to get the word in six tries, you feel awful and want to immediately try again. But you're going to have to wait until the next day for your next chance.

Supervisors: Supervisors are, rightly so, held to a higher standard than line-level employees. It's right there in the second *Douglas* factor, which suggests that, when disciplining, agencies consider: *The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.*

Here's the thing: Unlike Wordle, you may not get another chance the next day. Remember your role, your agency mission and do the best that you can to adequately prepare to handle any challenges that come your way.

Despite being five letters, F-E-L-T-G is an acronym and so it wouldn't be a solution for Wordle, but we can be a solution for your training needs. Gephart@FELTG.com

Latest OWCP COVID-19 Guidance Tackles Continuation of Pay
By Frank Ferreri

As with just about everything employment-related, COVID-19 continues to have a shifting impact on the federal workers' compensation landscape, with the Office of Workers' Compensation Programs pivoting in its guidance to meet the demands of a workforce entering its third year of pandemic-related challenges.

In its latest recommendations, issued in mid-February, OWCP focused on continuation of pay and how employees must demonstrate that they had COVID-19 to earn COP. The following chart highlights the agency's latest updates for when employees file COVID-related claims under the Federal Employees Compensation Act.

Topic	OWCP guidance
Establishing a COVID-19 claim	To show that she has COVID-19 for purposes of receiving COP, the employee: 1. Must be diagnosed with COVID-19 via a positive test result – excluding home tests – or a medical professional; and 2. Within 21 days of diagnosis, must have carried out duties that required contact with patients, members of the public, or coworkers.
Continuation of pay	COP is payable if a federal employee must miss time from for isolation after a positive COVID-19 test only if: 1. The employee can demonstrate she has COVID-19 via a positive test result or a medical professional. 2. The employee files a CA-1 within 30 days of the last exposure to COVID-19 at work.
Days of COP for isolation for COVID-19	Although OWCP pointed out that the latest CDC recommendations indicate that five days of isolation following a positive test is enough, OWCP will not intervene until the 10-day regulatory timeframe of 20 CFR 10.222 has passed.
Filing a FECA claim without demonstrating positive COVID-19 status	If an employee files a FECA claim without evidence of a COVID-19 positive test result or a report from a medical professional within 10 days, OWCP will formally adjudicate the claim and make a determination of COP. If it turns out that OWCP denies the claim, the agency can recover any COP previously paid to the employee.
Employees who don't have COVID-19 but must quarantine due to exposure	OWCP cannot accept a workers' compensation claim based solely on quarantine or exposure, and COP is not payable solely for quarantine or exposure.
Safety concerns	Although COP is not available for quarantine or exposure only, OWCP advised employees and agencies to consider possible safety leave, which can include paid leave, for quarantining purposes.

So, what's the takeaway? When it comes to OWCP's current stance regarding workers' compensation and COVID-19, COP will be available – but only if employees have a positive test that's not a home test or a report from their doctor indicating they are COVID-19-positive. info@FELTG.com