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

FELTG Newsletter | Vol. XIV, Issue 4 | April 13, 2022

Anticipating Return-to-the-Workplace Challenges

We tried in 2020 and again in 2021, but COVID-19 had other plans. Now in 2022, agency employees who have been teleworking for more than two years are finally returning to the physical workplace to join their colleagues who, because of the nature of their jobs, have been reporting in person throughout the pandemic.

COVID-19 has changed the way we socialize, from how much space we give strangers on the sidewalk to the language we use when we interact with coworkers. There are bound to be conflicts and challenges as people return to the physical workplace and come in close contact with others, after two years of isolation. Plus, President Biden's vaccine requirement for Feds was just reinstated – and there are multiple considerations to make in disciplining unvaccinated employees. We've put together a three-part webinar series Navigating the Return to the Post-pandemic Federal Workplace on May 4, 11 and 18. We'll tackle COVID-related harassment and reprisal, what to do with telework as a reasonable accommodation request, how to handle employees who refuse to be vaccinated or fail to report back in person, and more.

This month's newsletter covers new MPSB case takeaways, union participation in meetings, COVID-related leave and harassment, and much more.

Take care,

Deborah J. Hopkins, FELTG President

UPCOMING FELTG VIRTUAL TRAINING

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

EEO Counselor & Investigator Refresher Training
June 21-22

Honoring Diversity: Eliminating Microaggressions and Bias in the Federal Workplace
July 13

Workplace Investigations Week
August 15-19

We have many more virtual training events scheduled. Visit the **FELTG Virtual Training Institute** for full details.

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.

Three Lessons Learned from the New MSPB's Decisions
By Deborah Hopkins

My morning routine has changed significantly in the last few weeks. Now, along with my coffee, instead of reading the news, I've been eagerly checking the MSPB website for new cases (a decision on a PFR is officially called Opinion & Order, or O & O) issued by the Board. They've issued a few dozen decisions so far. Ann Boehm will touch on some of these cases in her *Federal Employment Law Update: Significant Cases and Developments* session during Emerging Issues in Federal Employment Law later this month.

Until then, here are three takeaways from our first read of the cases.

1. The Board is keeping non-precedential (NP) decisions, though not all are lengthy. FELTG has long advocated that the Board do away with NP decisions, since they don't add anything significant to the body of MSPB case law (5 CFR 1201.117), but alas, we don't always get what we wish for. In fact, in our recent interview with Acting Chair/Vice Chair Raymond Limon, he informed us that NP decisions were here to stay.

That said, most of the NP cases the Board has issued are only a page or two. And of the longer ones that contain a more detailed discussion of the merits, we've seen some interesting things, including:

- This Board's interpretation of how many specifications must be proven to uphold a charge,
- What it plans to do with *Lucia* challenges,
- Appropriate (and inappropriate) methods of notifying a probationer of their separation, and
- What types of evidence in response to alleged whistleblower reprisal actually rise to the level of "clear and convincing."

2. Whistleblowers are a priority. Speaking of whistleblowers, we estimate that somewhere between 700-800 of the 3,600+ petitions for review in the backlog contain allegations of whistleblower reprisal, and the Board has already issued decisions on several of these cases. Both members have spoken publicly about how important it is to protect whistleblowers from unlawful retaliation, so it's no surprise that these cases are already coming out.

3. Back pay is already adding up. A lack of quorum for half a decade did no favors to anyone, and the back pay for employees who were wrongfully removed or demoted is going to cost agencies (and taxpayers) a lot of money. Two of the new cases have ordered corrective action going back over a dozen years. Add interest and attorney fees to back pay and the cost is easily over a million dollars (or more) in these cases. In addition, while we anticipate agency actions will be upheld in a significant majority of these cases, there are employees who have been wronged who have been waiting years for a Board decision. We'll never be able to know the true cost of the lack of quorum – but thankfully we have one now.

Is anyone else as excited as we are that we finally have new cases? We'll keep you posted in this space, and with updated events on our virtual training and webinar training pages – and in our return to the classroom this summer.
Hopkins@FELTG.com

Don't miss FELTG's three-day virtual training Conducting Effective Harassment Investigations held May 3-5. Sessions will run from 12:30 – 4 pm ET each day.

Register now.

The Good News: The Union Doesn't Get to Attend Every Meeting (Part 2)
By Ann Boehm

This is final of my two articles on union attendance at meetings. Last month, I covered the *Weingarten* right. This month, it's formal discussions.

The statutory guidance on both types of meetings is in 5 U.S.C. § 7114(a)(2). The formal discussion language is in subpart (A): **"**An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented 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."

Let me be honest. I could write a long article discussing all the intricate aspects of what is and is not a formal discussion. Fortunately, I do not have to do so. Here's my public service announcement: In 2015, the FLRA Office of the General Counsel published "Guidance on Meetings." It's a must-read for anyone in Federal sector labor relations. The guidance summarizes key case law and highlights the important aspects of both formal discussions and *Weingarten* meetings. It's also 43 pages long.

The goal of this article is not to regurgitate all the details in that guidance, but instead to give you my own highlights regarding formal discussions, including some key practical advice.

Why does the union have this right?

In evaluating the union's right to be present at a formal discussion, you need to understand why they have the right in the first place. The right exists "to provide the union with an opportunity to safeguard its interests and the interests of employees in the bargaining unit--viewed in the context of a union's full range of responsibilities under the Statute." *Dep't of Justice, Bureau of Prisons, FCI Ray Brook*, 29 FLRA 584, 589 (1987), *aff'd*, *AFGE v. FLRA*, 865 F.2d 1283 (D.C. Cir. 1989). The biggest takeaway from the "why" is to realize that the union's right to be present at a formal discussion is to represent the entire bargaining unit, not any individual employee!

Why did Congress use the word "formal"?

The above-mentioned FLRA guidance explains this very nicely. Let me highlight the key information from that guidance (at page 5, emphasis added):

> Where a meeting is brief, spontaneous or deals with a performance issue particular to the bargaining unit employee, the Authority is less likely to find that it meets the "formality" requirement. In reaching this conclusion**, the Authority has noted that the word "formal" was inserted as an amendment to the Civil Service Reform Act of 1978 "'to make clear that this subsection does not require that an exclusive representative be present during highly personal, informal meetings such as counseling sessions regarding performance.**'" (citing *F.E. Warren AFB, Cheyenne, Wyo.*, 52 FLRA 149, 156 (1996) (*Warren AFB*).

Isn't that great to know!

So, what exactly is formal?

The FLRA highlighted the factors to consider to determine formality in *Department of Energy, Rocky Flats Field Office*, 57 FLRA 754, 755 (2002): "1) the status of the individual who held the discussions; (2) whether any other management representatives attended; (3) the site of the discussions; (4) how the meetings for the

discussions were called; (5) how long the discussions lasted; (6) whether a formal agenda was established for the discussions; and (7) the manner in which the discussions were conducted." There is another potential factor -- whether attendance was mandatory. *DVA, Central Ark Veterans Healthcare System*, 63 FLRA 169, 172 (2009).

It gets a bit tricky, though. The FLRA lists out these factors, but also has said they are "illustrative, and other factors may be identified and applied as appropriate." *VAMC, Richmond, Va.*, 63 FLRA 440, 443 (2009). Oh gee. That's helpful.

If it is a formal discussion, then what?

Prior to conducting a formal discussion with unit members, management must 1) notify the union, 2) within a reasonable time in advance of the meeting, 3) allow the union representative to be present, and 4) participate. Simple enough, right?

Practically speaking, Ann Boehm of 2022 has this advice for you: If it's not clear whether a meeting is a formal discussion or not, invite the union.

What? Ann, are you crazy?

Let me explain. Early in my career, my goal (as directed by management) was to try keep the union out of every meeting. Over time, however, I mellowed. I mean, why would you not invite the union to a meeting between management and bargaining unit employees?

Let's face it, if a bargaining unit employee is in the meeting, it is likely that the union will hear about it. If the union attends, and management does something the bargaining unit members don't like, the managers can always say, "Well, the union was present at the meeting."

And let me tell you the biggest thing I learned over a fairly long labor relations career. If you invite the union, you have satisfied your obligation. If they do not attend, that's on them. In case you hadn't noticed, federal employees meet a lot. If you invite the union regularly, you may find that they opt not to attend.

Here's another bit of practical advice. If you don't invite the union, and they think it was a formal discussion, the union can file an unfair labor practice -- a "gotcha." They get to say, "Bad management, you violated the Statute when you failed to invite us to this meeting." If you invite the union, you avoid the "gotcha." It's not as fun for the union.

What if the employees don't want the union there?

Believe it or not, bargaining unit employees do not always want the union to attend their meeting with management. But as I mentioned initially, the union's formal discussion right is intended to enable the union to represent the best interests of the entire bargaining unit. It is not the employee's right.

Where this gets a bit bizarre is on the grievance aspect of the formal discussion rights. For example, the FLRA considers EEO complaints and MSPB appeals to be grievances, so settlement discussions in such cases can be formal discussions. In practice, a bargaining employee may have private counsel for their EEO or MSPB case, and yet the union will have a right to attend a settlement discussion between management and the employee. You will find that bargaining unit employees are often concerned about the union attending their EEO settlement meeting. If that occurs, it's not management's problem. The agency is obligated to notify the union, and the union has a right to attend. If the employee has a concern, they should raise it internally with the union.

Conclusion

I hope these two articles have helped you know when the union has a right to be

present at management meetings. Just because the union wants to attend a meeting does not mean they get to attend. And that's Good News. Boehm@FELTG.com

[**Editor's note:** For more guidance on all things Labor Relations, join Ann and Joseph Schimansky for FLRA Week May 9-13. Register now.]

Special Event Later This Month!

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*

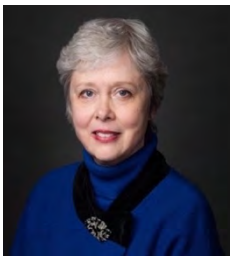
Friday, April 29: Labor Relations Spotlight

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

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

What Types of Leave Count in an Excessive Absence Case?

By Barbara Haga



Excessive absence seems so basic we shouldn't need to address it anymore. However, questions do still arise about what works and what doesn't. Occasionally, someone asks a question about something new, as happened recently when a FELTG customer inquired about excessive absence and COVID-related leave. First, let's trace how we got here.

Back in the olden days of excessive absence cases when I was a Navy HR practitioner, the interpretation of when excessive absence worked was that the employee had to exhaust available paid leave, both sick and annual, and then go on leave without pay for a significant period for the agency to be able to proceed. That left management in a tough spot when the employee had done the right thing and accumulated potentially thousands of hours of sick leave. Board decisions added further confusion over the years regarding whether you really had to wait for the employee to use up the paid leave.

In 1993, the FMLA created another leave category that was guaranteed each 12-month period. However, it could not be included in an excessive absence charge.

The Board resolved the first issue about what counted in the excessive absence charge in *McCauley v. Interior*, 116 MSPR 484 (2011). In this decision, the Board overruled prior interpretations about what leave could be counted. Here is the key ruling:

> There appears to be some inconsistency in Board precedent regarding what leave can be used to support an adverse action based on excessive leave use. *See, e.g., Curtis v. U.S. Postal Service,* 111 M.S.P.R. 626, ¶¶ 9-11 (2009) (holding

> that an agency cannot discipline an individual for his use of approved sick leave but can discipline an employee for his use of unscheduled LWOP); *Allen v. Department of the Army,* 76 M.S.P.R. 564, 570 (1997) (holding that an agency can bring an action against an employee for excessive absence even if the absence is excused on grounds of poor health); *Webb v. U.S. Postal Service,* 10 M.S.P.R. 536, 543 (1982) (holding that an adverse action taken by an agency against an employee based on periods of approved leave does not promote the efficiency of the service). *Because the efficiency of the service may suffer in the absence of an employee's services, regardless of the type of leave used, we hold that whether the leave is sick leave, annual leave, LWOP, or AWOL will not be dispositive to a charge of excessive absences. To the extent that the Board has held or implied otherwise in cases such as Curtis, 111 M.S.P.R. 626, Ryan v. Department of the Air Force, 107 M.S.P.R. 71 (2007), Scorcia v. U.S. Postal Service, 78 M.S.P.R. 588 (1998), Holderness v. Defense Commissary Agency, 75 M.S.P.R. 401 (1997), Clark v. Department of the Navy, 12 M.S.P.R. 428 (1982), and Webb, 10 M.S.P.R. 536, those cases are expressly overruled*. (italics added)

The next paragraph *reiterated* that FMLA hours could not be included in the charge:

> Because Congress's clear intent when enacting FMLA was to provide job security for individuals who needed to be temporarily absent due to a serious medical condition (whether their own or that of a family member addressed by the FMLA legislation) and the law unambiguously promises this job security, use of FMLA in any calculation to remove an employee is inappropriate. Therefore, it is improper to consider FMLA absences as a part of the equation when evaluating if an employee has taken excessive leave.

A footnote states:

> When enacting FMLA, Congress found that there was a "lack of employment policies to accommodate working parents [that could] force individuals to choose between job security and parenting" and there was "*inadequate job security for employees who have serious health conditions that prevent them from working for temporary periods*." H.R. Rep. No. 103-8(I) at 1 (1993). (italics added)

Excessive Absence and *Savage*

In *Savage v. Army*, 122 MSPR 612 (2015), the Board revised the interpretation in *McCauley* that AWOL hours could be included in excessive absence charges, since an excessive absence charge by its nature is a charge regarding approved absences and AWOL is unapproved. Thus, since 2015, AWOL must be cited separately in its own charge.

A reader asked whether Emergency Paid Leave (EPL) could be counted in an excessive absence charge. We won't know for sure until such a case is ruled on by the Board, but here is the conclusion I reached and the basis for it.

EPSLA and EPL

We have two different laws implementing COVID-related leave. In 2020, the leave was implemented by the Families First Coronavirus Response Act (FFCRA), which established two paid leave benefits, but only the Emergency Paid Sick Leave (EPSLA) applied to most Federal employees.

The EPSLA regulations issued by the Department of Labor begin with the following statement: "The Department of Labor published in the Federal Register on April 6, 2020, a temporary rule to implement public health emergency leave under Title I of the Family and Medical Leave Act (FMLA), and emergency paid sick leave *to assist working families facing public health emergencies*

arising out of the Coronavirus Disease 2019 (COVID-19) global pandemic." (italics added)

EPSLA included a section on prohibited actions which stated, "It shall be unlawful for any employer to discharge, discipline, or in any other manner discriminate against any employee who — (1) takes leave in accordance with this Act; and (2) has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act (including a proceeding that seeks enforcement of this Act), or has testified or is about to testify in any such proceeding." Thus, it's clear that the 2020 type of COVID-related leave could not have been used in an excessive absence case.

EPL was created by President Biden's American Rescue Plan, which was signed in March 2021. There is no preamble in the Act itself or anything in Sec. 4001 which created the EPL benefit for Federal employees that describes Congress' intent in providing the leave. But it is important to remember that EPL was designed to give a much greater amount of leave tied to the same public health emergency that FFCRA had dealt with. It should also be noted that the Treasury provided funds for agencies to receive reimbursement for the Emergency Paid Leave specifically to limit the impact on agencies.

Conclusion

I see significant parallels between the language regarding implementation of FMLA, which was specifically enacted to protect workers because of temporary absence due to a serious medical condition, and the language that is used where Congress has responded to COVID-related absences. The 2020 bill specifically indicated there could be no disciplinary penalty for its use. My gut reaction is that the MSPB will say an employee should not be penalized for using the EPL provided in 2021 specifically because of the pandemic.

Haga@FELTG.com

COVID-Related Harassment Should NOT Outlast the Pandemic

By Deborah J. Hopkins

Last fall, in the first filing of its kind, the EEOC filed a lawsuit against a private sector company for COVID-related harassment. According to EEOC's press release, "the pharmacy discriminated against a pharmacy technician with asthma who asked to wear a facemask at work as an accommodation of his disability immediately following the COVID-19 outbreak to help protect him from the virus. The employee was harassed because he requested this accommodation and was sent home twice when he asked to wear a mask, and then taunted and humiliated for questioning management's policy prohibiting masks, leading him to quit..."

Mask mandates are being lifted all around the country, and COVID cases continue to drop. However, your agency needs to be aware that the potential for discrimination, harassment, and reprisal related to COVID is far from over. Your agency's job is to prevent that from happening in the first place, or to take immediate, effective corrective action if it discovers such mistreatment has occurred.

It's probable that every theory of discrimination has been implicated since this pandemic began more than two years ago. Here are a few examples of areas where there could be potential liability if the agency or its employees do not respond according to the law:

- Employee requests telework as an accommodation because he is at high risk for severe symptoms of a COVID infection
- Employee chooses to wear a mask or to continue to socially distance after mask mandates are lifted because she has underlying medical conditions that rise to the level of a disability
- Employee reveals to supervisor he could not be vaccinated against COVID-19 for medical reasons, and

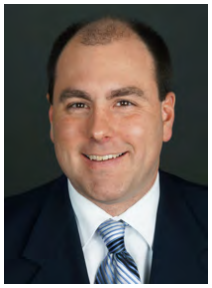
the supervisor refuses to consider a promotion for that employee
- Employee reveals to coworkers she could not be vaccinated against COVID-19 for religious reasons, and coworkers begin to ostracize the employee
- Reprisal or harassment against employees who requested exemptions from the vaccine mandate as an accommodation, including verbal comments, disparate treatment, and more
- Agency refuses to consider telework as an accommodation for employees who have been teleworking throughout the pandemic, and are now ordered to return to the worksite
- Supervisor doesn't allow an employee to return to the physical workplace because the employee has a known disability the supervisor believes makes the employee susceptible to more severe COVID, even though the employee is willing and able to work within their medical restrictions
- Asian American and Pacific Islander (AAPI) employees are harassed or discriminated against over the origin of the virus
- Harassment in a virtual or telework environment

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

There's a lot to consider as we start to discover what the Federal workplace will look like in the near future. Join FELTG for the virtual event Emerging Issues in Federal Employment Law, April 26-29, with multiple, targeted sessions to help your agency handle the new normal while ensuring a safe environment for your employees.

Or, let us know if you'd like us to present a training session to your agency attorneys, LR/ER specialists, EEO professionals, supervisors or employees. We're happy to help. Hopkins@FELTG.com

OPM Offers Roadmap for Your DEIA Plan
By Michael Rhoads



OPM has released its Strategic Plan for FYs 2022-2026. To put this report together, OPM did its homework.

The OPM Strategic Plan for 2022-2026 represents 132 reports and studies reviewed, interviewing 30 internal stakeholders and 58 external stakeholders over 36 organizations. The plan is divided into the four Goals OPM would like to accomplish during that period. OPM wants to position the Federal Government as a model employer, transform OPM's organizational capacity, provide greater customer satisfaction for OPM's customers (that's you!), and provide data-driven solutions that help with your agency's mission.

The objectives, which expand on each goal, reflect the Biden Administration's goals of increasing Diversity, Equity, Inclusion, and Accessibility (DEIA). I found the strategies outlined in Goal 1's objectives to be applicable to any agency, and a good reminder of best practices for everyone as many agencies transition back into the physical workspace.

Goal 1: Position the Federal Government as a model employer. To improve the Federal government's workforce and become a more model employer, OPM looks to draw on the diversity of all communities around the United States. "As a model employer, the Federal Government will recruit from all segments of society to attract a workforce that draws from the diversity of the American people."

Strategies for implementation for Objective 1.1 – DEIA. OPM encourages a top-to-bottom review of policies and practices to eliminate barriers to equity by tracking demographic data and leveraging expertise to examine DEIA at all levels of

grade and pay. To attract new talent from a more diverse population, use partnerships, paid internships, fellowships, and apprenticeships to reach out to historically underserved communities. Use DEIA as a tool to assess agency recruitment, hiring, promotion, retention, professional development, pay equity, reasonable accommodations access, and training policies and practices for fairness and impartiality across all pay levels. Assess barriers which deny employment opportunities, including at the SES level, to the LGBTQ+ community and to people with disabilities, and develop plans to eliminate those barriers. Promote pay equity at all levels of Government by reviewing job classifications.

FELTG's DEIA courses are designed to meet the Presidentially-mandated training for all agency employees from front-line supervisors to SES professionals.

Strategies for implementation for Objective 1.2 - Future of Work/Model Employer. OPM seeks to support agencies by providing human capital tools, guidance, and services as each agency returns employees to the physical workplace. In alignment with the President's Management Agenda, OPM will, "create a vision and strategy for how the Federal Government can be a model employer with respect to hiring, talent development, competitive pay, benefits, and workplace flexibilities…, and develop and advance human capital policies to support the longer-term future of work." Be sure to register for Emerging Issues in Federal Employment Law April 26-29, and see where the future of work is really headed.

.

Strategies for implementation of Objective 1.3 - Building Skills through Training. No organization, private or public, can hope to succeed without focused, high-impact training. OPM seeks to strengthen Federal HR by recruiting diverse, early-career talent, modernize the Pathways program, and design paid internships. Paid internships also loop back to Objective 1.1, since unpaid internships or similar programs designed to learn new skills, are a barrier to most low-income workers and students. OPM also encourages agencies to launch initiatives to "identify and develop, select, high-impact talent projects."

Agencies should improve the competitive hiring process with new selection rules and focus on customer service and problem solving in training opportunities for human capital professionals.

To provide agencies with access to more tools, OPM will improve assessments for hiring with a government-wide hiring assessment line of business and agency talent teams. All of FELTG's webinars and Virtual Training Institute courses are designed with your agency's mission in mind, and will help expand your employee's skills and work IQ.

FREE DEIA RESOURCE!

FELTG's new DEIA Resources Page provides information on upcoming DEIA training, news articles, and resources all in one location.

Strategies for implementation of Objective 1.4 - Employee recognition. As luck would have it, yours is not the only agency in the Federal government. OPM encourages agencies to, "share leading practices related to engagement and recognition across Federal agencies through Chief Human Capital Officers (CHCOs), Federal Executive Boards, the White House, and other stakeholders with shared missions."

Agencies should also, "increase attention to programs that regularly spotlight workers and union members at OPM and across the Federal Government throughout the year, culminating with Public Service Recognition Week," which is May 1-7, 2022 this year. [As a side note, I'd love to hear what your agency will do this year to honor our public servants. Feel free to send me an email, Rhoads@feltg.com.]

In the introduction to the Strategic Plan, OPM Director Kiran Ahuja said it best. "We will promote a diverse, equitable, inclusive, and accessible Federal workforce based on merit; develop a strategic vision for the Federal Government to prepare for the future of work; support Federal agencies to attract early career talent; and equip current and future Federal workers with the ability to build new skills over time to adapt to a rapidly changing world."

At FELTG, we strive day in, day out to train federal workers to adapt to a rapidly changing work environment, and offer courses to promote the ideals of Diversity, Equity, Inclusion and Accessibility. Stay safe, and remember, we're all in this together. Rhoads@feltg.com

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

FELTG's annual supervisory training event is back 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:

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?

Failure to Address Stress is a Slap in the Face to Return-to-Workplace Efforts
By Dan Gephart

Those who thought coming out of a pandemic would be all butterflies and moonbeams are instead finding it to be more giant spiders and snow squalls.

Perhaps the best example of the nation's mood at this time may be the one everyone is tired of talking about -- actor Will Smith marching onto stage at the Oscars and slapping presenter Chris Rock across the face. The act was shocking, aggressive, unexpected, and triggering for many.

Unfortunately, this head-scratching behavior has become all too common, and it's an unwelcome addition to many workplaces. Just ask your Federal colleagues who work at airports or friends or family who work in retail and restaurants.

Oh, and if that's not enough, there's inflation, a rise in violent crime, a war playing out daily on TV, and a more-than-we're-all-comfortable-with allotment of news articles about nuclear weapons. Recent polling by the American Psychological Association shows that as Americans are trying to come to grips with the strain of the prolonged pandemic, the number and types of serious stressors continues to increase, leading to more stress.

And by the way, this is the general mood at the exact moment that you're wrapping up plans or, in some cases, actually implementing those plans, to bring employees back to the physical workplace for the first time since early 2020.

Shana Palmieri, LCSW will present the two-hour virtual training Navigating the Realities of Employee Stress, Anxiety and PTSD in the Post-pandemic Workplace on April 13, and I

can't think of a more timely and necessary training. If you're reading this the morning the FELTG newsletter is sent out, here's what you need to know: It starts at 1 pm ET today, so hurry and register. If you're reading this later, email me (Gephart@FELTG.com) and find out how to bring this virtual event directly to supervisors at your agency.

Obviously, you need to be concerned about how all this stress will manifest itself in the workplace, and, believe me, it will. It could be something as minor as an employee being rude to a customer or coworker, or it could lead to harassment, bullying, or even violence. More often, as Shana Palmieri will point out, you'll find employees who are:

- Irritable
- Fatigued
- Feeling helpless
- Struggling with self-esteem
- Nervous
- Having trouble concentrating

Here are a few tips for how to manage a stressed-out workplace:

Recognize what's causing stress. We've pointed out some of the outside-of-work stressors, but the workplace has its share, too. Look up from your computer and watch your employees. Talk with them and, more importantly, listen. Once you identify possible stressors, determine what you can do to limit them.

Move quickly to provide accommodation. What you see as stress, could be anxiety, depression, or PTSD. You're not your employee's doctor, so you shouldn't be diagnosing your employees. However, if an employee asks for simple work adjustments (a quiet space, flexible schedule, etc.), make those adjustments quickly and efficiently.

[**Editor's note:** By most accounts, you are going to be inundated with reasonable accommodation requests for telework in the next few months. Be sure your accommodation procedures are well-oiled, and the supervisors know what to do. For guidance, join Ricky Rowe as he presents *Telework as a Reasonable Accommodation When Employees Return to the Workplace*, one of eleven sessions taking place April 26-29 during FELTG's annual Emerging Issues in the Federal Workplace.]

Identify clear goals. Failure to provide well-defined expectations could lead to more stress for many employees. Schedule regular meetings to discuss those expectations and the employee's progress in reaching them.

Maintain a hostility- and discrimination-free workplace. This goes without saying. Workplace harassment has been on the rise, even though employees have been working at home. Put a stop to any discriminatory or harassing behavior as soon as you're aware of it and be clear that it won't be tolerated. This includes retaliation, or more specifically, COVID-related reprisal. FELTG President Deborah Hopkins will cover the *Widening Net of Reprisal* during FELTG's Emerging Issues in Federal Employment Law event, and on May 4, during the first of a three-part webinar series Navigating the Return to the Post-pandemic Workplace.

Learn how to handle conflict. It's inevitable. Yet so few supervisors are skilled or confident enough to truly manage conflict. FELTG's simulation-based training *Jumping In: Be Confident When Managing Conflict* will help your supervisors to develop one of the most important managerial tools. Contact me for more information about how to bring this course to your agency.

Lead by example. Manage your own stress. Eat right, get sleep, breathe deeply, and exercise – all things you know should do. Gephart@FELTG.com

The three-part webinar series Navigating the Return to the Post-pandemic Federal Workplace begins on May 4. To get more information or to register, visit here.