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

FELTG Newsletter | Vol. XIV, Issue 5 | May 18, 2022

Three Things to Know in the Civil Service This Month

FELTG Nation: Here are three recent happenings you should know about:

1. Last week, the Senate confirmed Susan Tsui Grundmann to be a Member at the Federal Labor Relations Authority. There are now two Democrats and one Republican on the FLRA. As a result, we anticipate a significant change in philosophy – and in the outcome of FLRA decisions.

2. On May 12, the MSPB issued a decision confirming that the *Santos v. NASA* requirement to prove unacceptable performance before a PIP is retroactive to the Petitions for Review in the backlog. Expect a lot of remands in the coming months.

3. The EEOC and DOJ are looking into potential disability discrimination when employers use artificial intelligence (AI) and other software tools to make employment decisions. They released a technical assistance document in attempt to prevent discrimination from occurring.

This month's newsletter discusses a supervisor who filed a hostile environment harassment claim against an employee, why hybrid doesn't have to be a bummer, the meaning of nexus, and more.

Take care,

Deborah J. Hopkins, FELTG President

UPCOMING FELTG VIRTUAL TRAINING

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

Back on Board: Keeping Up With the New MSPB
July 20

Handling Threats of Violence in the Federal Workplace
July 19

Addressing Pregnancy Discrimination in the Federal Workplace
August 10

Workplace Investigations Week
August 15-19

Visit the **FELTG Virtual Training Institute** the full schedule.

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.

That Time a Supervisor Was Harassed by His Employee for Being Gay – and the Agency Was Liable
By Deborah Hopkins

Every now and then, a supervisor in one of my classes will ask if they have a right to file an EEO complaint alleging harassment by a subordinate employee. I'll tell them yes, they do have that right. I also tell them handling the harassment as a conduct issue is a much quicker process that yields rapid results and allows the supervisor to avoid the EEO complaint process entirely, if they prefer not to file.

How so, you might wonder?

Well, a supervisor who believes a subordinate is harassing him must simply set a rule of conduct (for example, do not refer to me as a "f*g" or "f*ggot"), and then discipline the employee if she violates the rule. [Note: We are using asterisks so that your agency's firewall won't block you from receiving this message. We recommend NOT using asterisks in establishing rules of conduct, reports of investigation, disciplinary letters, or other official agency documents.]

A few days ago, I came across a fairly recent EEO decision where a supervisory health system specialist at an IHS medical facility alleged harassment based on sexual orientation. The harassment was coming from a subordinate. The agency FAD acknowledged unwelcome conduct but said the conduct was not sufficiently severe or pervasive, and the complainant failed to take advantage of a key corrective opportunity provided by the agency.

The complainant was the employee's supervisor and he did not discipline the employee for the conduct. The complainant appealed the FAD to the EEOC.

The EEOC reversed the FAD and found the agency liable for hostile work environment harassment.

Here are relevant details from the case:

- Over a 21-month period, the employee engaged in at least nine incidents of harassment based on the complainant's sexual orientation, including multiple uses of the words "f*g" and "f*ggot."

- Seven of these incidents included comments made to other agency staff or directly to, or within earshot of, at least four agency management officials. Examples of the employee's comments included:
    - "If they want to pay me for fighting with a f*g all day, then I guess that is what I will do."
    - "I hate [Complainant], that f*cking f*ggot!'"
    - "I have the ear of the Area Director and I am going to report your f*ggot *ss and everyone in this clinic for everything that is going on in this clinic."

- The complainant's immediate supervisor, the CEO, informed him that the employee had been making derogatory comments about the complainant's sexual orientation directly to the CEO. When the complainant questioned whether the CEO had taken corrective action, the CEO said that she had admonished the employee, and referred the complainant to the EEO Complaint process for next steps. The CEO admitted she did not discipline the employee who engaged in the harassing conduct because "she did not feel that it would be appropriate to interject herself ..." into the situation.

- The complainant said that he made multiple attempts to discipline the

> employee, but that the discipline was returned to him. The agency did not present a rebuttal to this statement.

Taking these facts into consideration, the Commission found a hostile work environment based on sexual orientation. It attributed liability to the agency because management officials did not take prompt and effective action once they became aware of the employee's conduct. The Commission said it was improper for the agency to place the onus on the complainant to discipline the employee or file an EEO complaint, and further stated:

> We remind the Agency that the EEO process is not a substitute for the Agency's internal process. Moreover, we find that the inadequate responses from Complainant's chain of command likely emboldened [the employee] to continue harassing Complainant, diminished his authority as her supervisor, and heightened the severity of the alleged incidents. *Debbra R. v. Dep't of Veterans Affairs*, EEOC Appeal No. 0120161305 (Jul. 26, 2016) (finding that when harassment is repeated, a supervisor's failure to respond to instances of alleged harassment heightens the severity of the alleged act). As such, we find that [the employee]'s actions unreasonably interfered with Complainant's work environment and management officials failed to take prompt and effective action.

Foster B. v. IHS, EEOC Appeal No. 2019005682 (Apr. 12, 2021).

The case didn't discuss anything about the returned discipline the complainant alleged, and I can't help but wonder if that was a deciding factor in the Commission's decision. One thing is for sure, a lesson learned from this case: Any agency management official who has knowledge of harassing conduct has an obligation to take prompt, effective corrective action – even if the harasser is not in that person's chain of command. A failure to act can cause agency liability, and potentially immeasurable harm to the victim.

To learn about making the Federal workplace a welcome and inclusive environment, join us on June 9 for Promoting Diversity, Enforcing Protections for LGBTQ Employees. Hopkins@FELTG.com

UPCOMING FELTG WEBINARS

FELTG's webinars provide specific, timely, and useful guidance – and they do it in just 60 minutes.

To find out more about FELTG's webinar offerings and to get the most up-to-date schedule, visit our Webinar Training page.

The Changing Nature of Hostile Work Environment Claims
May 19 – *that's tomorrow, register now!*

Got Nexus? Accountability for Off-duty Conduct
June 7

The Federal Supervisor's Workshop: Building the Best Toolkit for Managing Today's Workforce
Remaining sessions: June 14, July 12, August 9, August 23

Federal Labor-Management Relations: Working Together to 'Safeguard Public Interest'
June 23

Reasonable Accommodation Webinar Series
July 21, July 28, August 4, August 11, August 18

Feds Gone AWOL: Understanding the Charge and Applying it Correctly
October 6

High Times and Misdemeanors: Weed and the Workplace
October 27

Disciplining Management: The Bigger They Are, the Easier They Fall
By Barbara Haga

In supervisory training classes, I have heard participants comment about a double standard for corrective action. In essence, they said that if a non-supervisory employee messed up and violated some conduct rule, he would be hammered, but if it was a higher-level manager, it would be swept under the rug.

My usual response is that's not true, which is based on my own experience. I could rattle off specifics regarding some of the cases I worked on myself or have studied thoroughly. I usually make a comment along the lines of "the bigger they are, the easier they fall," since the *Douglas* factors take into account the type of position held. Also, managers are held to a higher standard.

I was reviewing decisions issued by the newly comprised Board and I was struck by the fact that several involved those high-level officials. The decision I am writing about this month particularly caught my attention because:

1. The charge of conduct unbecoming is one I have written about more than once.

2. Some of the specifications involved thorny actions for which it's debatable whether they were removal-worthy misbehavior.

It is a non-precedential decision, but helpful for understanding where the lines can be drawn.

The Initial Decision

The case is *Hornsby v. FHFA,* DC-0752-15-0576-I-2 (April 28, 2022). [**Editor's note**: Read about FELTG President Deborah Hopkins' recent take on *Hornsby*.]

This was an appeal from an action that took place in 2015. Hornsby was the Chief Operating Officer for the Federal Housing Financing Administration. He was removed for conduct unbecoming, including 18 specifications.

Four of the specifications were threats. One was: "I can understand how someone could go postal. If I decide to take myself out, I will walk into Ed DeMarco's (Former Acting Agency Director's) office and blow his brains out and then kill myself."

The AJ did not sustain these four specifications based on her credibility findings. This was a "he said – he said" issue. The other party was the HR Director who was subordinate to the appellant. The AJ found the appellant's version of what he had said and done at least as credible as the HR Director's version. The Board did not disturb the AJ's credibility findings on these specifications.

The AJ also did not sustain the remaining specifications, which included the appellant engaging in the following actions:

- In a meeting, he placed his hand over the mouth of the project director for the National Mortgage Database to silence him from making further comments.
- He told two agency attorneys that a memorandum they had drafted discussing agency liability regarding data breaches might be a "career ender."
- On unspecified occasions when he was dissatisfied with one or more HR employees, he told the HR Director that he would outsource the HR function. Specification 13 involved saying the same thing about the Contracting Operations group.
- He lost his composure in an HR meeting and expressed a desire to fire anyone who had complained about him.

- He asked the HR Director to go to the former acting director and ask him to raise his Level 3 rating so that he could get an executive bonus.

The AJ found six of the specifications in this group weren't supported with sufficient evidence. For the remaining eight specifications, the AJ found discipline wasn't reasonable. The AJ accepted the explanation regarding the incident with the mouth-covering and determined the person with the covered mouth was a friend and he was protecting him by stopping him from talking. The AJ found that the statement about ending one's career with a particular legal position was simply not unbecoming.

After reading all of this, I couldn't help but think what it would be like to work in an organization whether this person would have been my second-level supervisor. I've worked in a situation where the person superior to the HR Director didn't know much about how HR should work, knew very little about ER/LR, and might have made decisions that I didn't agree with, but I have never been in a situation where that individual was threatening or malicious. I think it would make it very hard to go to work every day with optimism about what you could accomplish or the future of your program or your agency -- or yourself.

The Board's Decision

The Board reinstated the removal. Among other rulings, the Board found that even though the subordinate wasn't offended, a manager putting his hand over an employee's mouth in a meeting was improper and unsuitable. The Board also found the "career ender" remark was intimidating. It upheld that specification.

Regarding the specification about asking the subordinate to intervene regarding the appellant's appraisal, the Board stated, "We find that it was improper for the appellant to do so. As previously noted, the appellant was the HR Director's immediate supervisor. Thus, in making this request, the appellant was placing the HR Director in the untenable position of either refusing his supervisor's request or negotiating with his former second-level supervisor for a better performance rating for his supervisor."

The ruling on the penalty is worth reading. Many of the things cited are bad behavior that many of us may have seen in our careers. Any one of those things alone might not support significant discipline. However, when taken together, they show a manager not operating appropriately in that role. Only 5 of the 18 specifications were sustained. However, in the words of the Board, several of them were serious or highly serious.

Noting that Hornsby was a high-ranking supervisor who occupied a position of trust and responsibility, they found it appropriate for him to be held to a higher standard. The Board concluded:

"Although the agency failed to establish much of the specific misconduct, the specifications we do sustain are without question quite serious. Thus, based on the specific facts of this case and the proven level of impropriety, we find that the agency's chosen penalty is within the parameters of reasonableness and that the sustained specifications warrant removal." Haga@FELTG.com

FELTG Returns to the Classroom … In Person

Developing and Defending Discipline: Holding Federal Employees Accountable
Washington, DC
July 12-14

Advanced Employee Relations
Norfolk, VA
August 2-4

Register early for these classes. Class size is limited.

The Good News: Hybrid Doesn't Have to Be Horrible
By Ann Boehm

I'm predicting it now. The Merriam-Webster word of 2022 will be "hybrid." I could be wrong. They may choose "inflation." But I'm an employment lawyer, so I'm going with "hybrid."

In case you don't pay attention to the Merriam-Webster word of the year, I'll relay that the word of 2021 was "vaccine." In 2020, it was "pandemic." Seems logical to me, given the theme of the past two years, that "hybrid" will win in 2022.

Why "hybrid"? It's the post-pandemic workplace dynamic being utilized by most employers in 2022. Employers are requiring employees to come to the office X days per week, and work from home X days per week. Or month. Or whatever. It's like trying to have your cake and eat it too. (I've never really understood that expression. Have your cake and eat it too? If you have cake, don't you eat it? Anyway, I'm using it here.)

The hybrid workplace is an effort to satisfy the 75% of executives who want to come back to the office three or more days a week and appease the 63% of rank-and-file employees who want to stay at home in their jammies and comfy shoes with Fluffy on their laps. (Statistics from "1 Big Thing: Your office, forever changed," *Axios Finish Line* (March 23, 2022)). It's also an acknowledgment that "[n]ever again will most office workers spend five-day, 40-hour weeks in physical buildings, jammed with humans," per that same article.

Just for the record, I'm a big fan of the idea that 40 hours a week in an office is history, but not everyone is. And pre-pandemic, the Federal government was one of the ultimate employers of the in-office, 40-hour-week.

Here's the thing to keep in mind: Work is not a place, it's what you do. You may have seen that slide if you've taken some of our training. It makes a lot of sense.

There's another thing to keep in mind. Every Federal agency has a mission and obligation to the public to fulfill that mission. Where the mission is accomplished is not what matters. What matters is that it *is* accomplished.

I've read a lot of articles about the workplace and the pandemic. One of my favorite quotations explains that "expecting people to just 'return to work' does not acknowledge the challenges and difficulties employees endured. Employers can't expect employees to pretend like we didn't just live through a social catastrophe … Employers need to understand the employees returning to the office are not the same people who left last March," Stanford University sociologist Marianne Cooper told *The Washington Post.*

"America's workers are exhausted and burned out – and some employers are taking notice."

I think that's freaking genius. The article is pretty daggum old in the pandemic scheme of things – June of 2021 – but the quote resonates. The other thing to keep in mind is that the quote applies to everyone in the workplace -- supervisors, employees, HR specialists, counsel, etc.

Everyone is dealing with the post-pandemic world in their own way.

So, I've been reflecting. Pre-pandemic, agencies offered telework and flexible work schedules. I used to have a supervisor who had an alternative work schedule that meant she did not work at all every other Friday. She worked her eight nine-hour days, one eight-hour day, and had every other Friday off. It drove me crazy. Can I tell you how many times I needed something approved on her "AWS"? I would have greatly preferred that she be at home teleworking every day.

As a supervisor, I much preferred teleworking employees to AWS employees who had a full day off every other week. Remember: Work is not a place. It's a thing you do.

There will always be supervisors who want to eyeball their employees, have them in the office. That's why hybrid work is what 2022 is all about.

How should you handle this hybrid world? Please do me the favor of managing effectively. Figure out whether telework helped or hindered your mission. If it hindered it, you need your people to return to the office for at least part of the week. You will be in hybrid land.

The hybrid workplace will not make everyone happy. In early April, the *Washington Post* published an article focusing on the stressors of hybrid work. "Hybrid work for many is messy and exhausting." One of the frustrated workers explained that going from total telework to three days in the office requires her to wake up an hour earlier, spend an hour driving, and miss out on breaks for fresh air, and hinders her ability to stretch regularly to alleviate her chronic back pain. Other issues with hybrid work include problems keeping track of belongings in two workplaces and trying to figure out when office visits coordinate with those of colleagues. Some workers are also mystified by making the effort to go into work only to find that they are in the office alone.

Despite these frustrations, the stressors of the hybrid working world are better than spending full time in the office, according to the *Post* article. And thus, it seems certain that hybrid is here to stay.

Expect some growing pains. Expect some frustrations. Expect employees to complain. But in the end, hybrid is better than the old school version of the in-person government workplace. Remind your employees of that. It's not horrible. And that's Good News. Boehm@FELTG.com

Willful and Intentional: Know When You're Dealing With Insubordination

By Dan Gephart

Have you ever had an employee challenge your order or refuse an assignment? Has an employee ever replied to an order with the question: What gives you the right to make me do this?

Regarding the latter, the answer is simple -- 5 USC 301-302. Here's what it says:

"The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business … and to [D]elegate to subordinate officials the authority vested in him … by law to take final action on matters pertaining to the employment, direction, and general administration of personnel under his agency."

The willful and intentional refusal to obey an authorized order of a superior that the superior is entitled to have obeyed is called *insubordination*. With employees returning to the physical workplace and the vaccine mandate kicking back in at the end of the month, there's a good chance you will come face-to-face with situations that look like insubordination in the upcoming weeks. For example, maybe you'll have:

- An employee who will not get vaccinated.
- An employee who will not provide proof of vaccination.
- An employee who won't wear a mask where required, or won't follow other safety protocols.

Or here's another likely possibility: An employee wants to remain in telework status,

and continues to stall the process, by not responding to questions.

These are all instances of misconduct. But is it insubordination? Knowing this in advance is critical to whether any action you take will succeed if challenged.

In a recent class of *Insubordinate Employees? Don't Mess With the Wrong Elements*, FELTG President Deborah Hopkins explained what it takes for insubordinate charges to succeed, and she shared some alternative charges that may more appropriate. [Want to bring this 60-minute training to your agency? Contact me or send an email to info@feltg.com.]

The important question you need to ask when faced with insubordinate-like actions is this: Is it a failure to comply or a refusal? When you charge an employee with insubordination, you must prove intent.

In the following two examples, one agency proved insubordination, and the other didn't. This first decision is 20 years old, however, the topic is quite relevant.

Refusal to be Vaccinated

The Kilauea, a ship supplying ammunition to an aircraft carrier operating in the western Pacific Ocean, was headed toward Korea, a high-risk area for biological weapons. The Commander of the Military Sealift Command ordered that all members of the crew – civilian and military – receive vaccinations against anthrax.

Two Navy employees *refused*. The chief mate, their supervisor, ordered them to report to the Medical Services Officer to be vaccinated. Again, they refused to be vaccinated and the chief mate warned that they would be removed if they did not receive the vaccination. A week later, they were "signed off the ship."

After investigating the employees' claims that they were entitled to medical waivers, the agency removed both employees for "failure to obey a direct order to receive mandatory injections of an anthrax immunization vaccine." The decision was later affirmed by the Board and the Federal Circuit, who found the removals neither excessive nor unauthorized.

"The misconduct constituted insubordination, which this court defines as a willful and intentional refusal to obey an authorized order of a superior officer, which the officer is entitled to have obeyed."

A Change of Heart

Remember, intent is the key. The Navy employees refused to get vaccinated. And they followed through on their commitment. But what if they changed their minds? They certainly had plenty of opportunity to do so.

That wasn't the case with the employee in *Milner v. Department of Justice*, 7 MSPR 37 (1997). The DOJ employee was being questioned as a witness in an investigation. She was ordered to turn over documents to the investigator. She initially refused, citing concerns about her colleague's confidentiality. But she went home, gave it some more thought, and brought in the information the next day.

The agency wasn't pleased with the delay and removed the employee for insubordination.

It didn't hold up. The MSPB found the agency failed to prove a "willful and intentional refusal" because she ultimately complied. The agency could have charged the employee with something else, but they struck out with insubordination.
Gephart@FELTG.com

SAVE THE DATE!

The annual **Accountability, Challenges and Trends** event returns July 26-29. Keep an eye on FELTG's Virtual Training Institute page for the latest information.

Explaining the Nexus Requirement in Misconduct Cases
By Deborah Hopkins

One of the considerable ways in which Federal employment is different from at-will employment, is that the *Civil Service Reform Act* allows a Federal agency to fire a career employee only for cause (with a few exceptions we won't get into today).

An adverse action may be brought **"only for such cause as will promote the efficiency of the service."** 5 USC 7513(a); 5 CFR 752.403. This is where we get the nexus requirement. A nexus is defined as a connection or a link.

The specific charges, no matter how they're drafted, are notice concepts that relate to due process, but efficiency of the service is the legal criteria. The agency needs to prove two things in an adverse action:

1. The reason, charge, and specified conduct (by the employee) occurred, and
2. The action (taken by the agency) promotes the efficiency of the service.

Miller v. Dept. of Interior, 119 MSPR 331 (2013)

In law, as well as logic, there must be a clear and direct relationship demonstrated between the articulated grounds for an adverse personnel action and either the employee's ability to accomplish his/her/their duties satisfactorily or some other legitimate government interest promoting the "efficiency of the service." *Doe v. Hampton*, 566 F.2d 265 (D.C. Cir. 1977).

It's dangerous for agencies to assume the nexus is clear. In most cases, even if an employee engages in egregious criminal conduct, the agency should not rely merely on speculation or an unfounded assertion that the misconduct impacts the efficiency of the service; the agency has the burden of establishing the nexus by specific evidence. *Douglas v. Veterans Administration,* 5 MSPB 313, 334 (1981); *Allen v. U.S. Postal Service,* 2 MSPB 582, 584 (1980).

If the misconduct occurs on duty, or using agency resources, it is much easier for the agency to show nexus. MSPB has said it is well-settled that there is a sufficient nexus between an employee's misconduct and the efficiency of the service when … the conduct occurred at work. *Hornsby v. FHFA*, DC-0752-15-0576-I-2 (Apr. 28, 2022)(NP), citing *Parker v. U.S. Postal Service*, 819 F.2d 1113, 1116 (Fed. Cir. 1987); *Miles v. Department of the Navy*, 102 M.S.P.R. 316, ¶ 11 (2006). But what if the misconduct occurs off-duty?

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

The MSPB generally recognizes three independent means by which an agency may show a nexus linking an employee's off-duty misconduct with the efficiency of the service:

(1) a rebuttable presumption of nexus that may arise in "certain egregious circumstances" based on the nature and gravity of the misconduct;
(2) a showing by preponderant evidence that the misconduct affects the employee's or his co-workers' job performance, or management's trust and confidence in the employee's job performance; and
(3) a showing by preponderant evidence that the misconduct interfered with or adversely affected the agency's mission.

See, e.g., Johnson v. Department of Health and Human Services, 22 M.S.P.R. 521, 526 (1984); *Merritt,* 6 M.S.P.R. at 590-606; *Gallagher v. U.S. Postal Service,* 6 M.S.P.R. 572, 576-77 (1981).

Here's an example where the agency properly established nexus: The agency charged the appellant with conduct

unbecoming and removed him after it learned the appellant had consensual romantic relationships with three subordinates. Even though no agency policy prevented such relationships, the Board upheld the removal because the agency showed the relationships affected his supervisory role, his interaction with his subordinates was negatively affected, and the appellant's supervisor lost confidence in the appellant's judgment. *Robacker v. USDA,* Fed. Cir. No. 2009-3289 (July 9, 2010)(NP).

And here's an example when the agency did not properly establish nexus: An FBI agent filmed sexual encounters of himself and another agent without her knowledge. The FBI removed the appellant and using the concept of "clearly dishonest" behavior to establish nexus between the misconduct and the efficiency of the service. The Federal Circuit found the agency's nexus argument to be too vague. *Doe v. DoJ*, 565 F.3d 1375 (Fed. Cir. 2009).

Nexus is too important to skip over, so join FELTG and instructor Bob Woods on June 7 for the 60-minute webinar Got Nexus? Accountability for Off-duty Conduct. Hopkins@FELTG.com

MANAGING ONGOING COVID-RELATED EEO CHALLENGES IN THE FEDERAL WORKPLACE

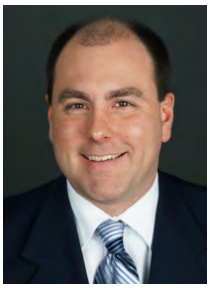
How should agencies prioritize all those exemption requests that were on hold for several months when the vaccine mandate was enjoined?

Is COVID-related harassment and reprisal illegal under EEO statutes?

What documentation should agencies maintain to defend against the complaints that will inevitably be filed?

FELTG instructor Katie Atkinson will answer these questions and more during Managing Ongoing COVID-related Challenges in the Federal Workplace on June 28 from 1-4:30 pm ET. Register now.

Federal Employee Viewpoint Survey Results – May 2022
By Michael Rhoads



The results are in! Every year, OPM takes the pulse of what Federal employees are thinking and catches the latest trends. It's a great chance for agencies to take pride in what they are doing well, recalibrate what needs to be fine-tuned, and look for blind spots that may have eluded their attention.

So, what can we learn from this year's Federal Employee Viewpoint Survey (FEVS)? Quite a lot.

Let's start with what agencies are doing well. The highest percentage level of agreement, at 88%, was "Employees in my work unit meet the needs of our customers. (Q. 14)." Most Federal employees know their colleagues work hard every day for our nation. Supervisors should also be given proper recognition as well: 86% of respondents felt their "supervisor treats me with respect. (Q.29)" and 82% feel "my supervisor listens to what I have to say (Q. 28)."

What could be fine-tuned? Employees seem to receive a mixed message about work-life balance depending on the messenger. Eighty-four percent report that "my supervisor supports my need to balance work and other life issues. (Q. 25)." However, only 60% believe "Senior leaders demonstrate support for Work-Life programs. (Q. 38)."

But this is not a time to rest on our laurels. At 42%, the second lowest percentage level of agreement is "In my work unit, steps are taken to deal with a poor performer who cannot or will not improve. (Q. 10)." This is a common theme we here at FELTG address in many of our courses. However, managers can – and should – take action.

It is our mission here at FELTG to give supervisors the appropriate tools to handle poor performers. If you are a supervisor who could use help dealing with poor performers at your agency, FELTG's flagship course UnCivil Servant will take you step by step through the process of dealing with unacceptable performance. Join us on Tuesday, May 24 and Wednesday, May 25 from 12:30 – 4 pm ET each day.

FREE DEIA RESOURCE!

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

Another important takeaway I found in the FEVS is employees want better recognition for their job performance, and "differences in performance" compared to their co-workers. Better communication is also on the minds of employees since only 59% report "Managers promote communication among different work units (for example, about projects, goals, needed resources). (Q.35)"

One thing is relatively clear in reviewing the FEVS, telework makes people happy. Looking at the individual questions there was a positive upward trend in responses from 2017-2020. The 2021 FEVS responses declined in almost every case.

I can hear the statisticians out there yelling, "correlation is not causation!" However, when almost every metric comes down year over year, I'm willing to take the educated guess a decline in telework might be the culprit.

To back up my assumption, the telework status of 'I telework every workday' started at 2% in 2019, rose to 47% in 2020, and came down to 36% in 2021 as reported in the FEVS. OPM also came to the same conclusion, "Telework is positively related to higher scores on Employee Engagement and Global Satisfaction and declines in telework could be linked to a decline in these scores."

What is clear is that change marches on in our society. We're still coming to terms with the drastic changes everyone in the world was forced to face over two years ago. When it comes to dealing with changes to Federal Employment Law, FELTG is here to assist you. Stay safe, and remember, we're all in this together. Rhoads@feltg.com

Webinar series!

REASONABLE ACCOMMODATION IN THE FEDERAL WORKPLACE

One of the most challenging and complex areas in federal employment law is the obligation to provide reasonable accommodation, whether it's to qualified individuals with disabilities or individuals with sincerely held religious beliefs.

And that was the case *before* the pandemic.

Now understanding the intricacies of these important laws is trickier, yet more important, than ever.

FELTG's Reasonable Accommodation in the Federal Workplace webinar series returns for 2022 with the following sessions:

July 21- Reasonable Accommodation Framework: Disability Accommodation Overview and Analysis

July 28 – The Importance of the Interactive Process

August 4 – Telework as a Reasonable Accommodation

August 11 – Reasonable Accommodation: The Mistakes Agencies Make

August 18 – Religious Accommodations: How They're Different From Disability Accommodation.

Register now for one session, two sessions, or the whole series.