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

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Spit out the Salt

I have recently become fascinated with an animal called the marine iguana. This reptile is only found in one place: the Galápagos Islands, off the coast of Ecuador. These animals adapted many, many years ago to feed on ocean algae (you read that right). They can dive to depths approaching 100 feet, and can hold their breath for up to an hour.

The most interesting part to me is that their bodies have a way of expelling the excess salt they ingest while feeding underwater – special glands near their nostrils allow them to "spit" out the salt. I've seen this firsthand and it mimics a sneeze. Don't get too close.

How does this relate to Federal employment law? In FELTG classes we teach you how to comply with the law and "spit" out the additional hurdles you don't need in your way. And in this month's newsletter we discuss hurdles in COVID discipline cases, clean record agreements, reasonable accommodation check-ins, and much more.

Take care,

Deborah J. Hopkins, FELTG President

UPCOMING FELTG VIRTUAL TRAINING

The FELTG Virtual Training Institute provides live, interactive, instructor-led sessions on the most challenging and complex areas of Federal employment law, all accessible from where you work, whether at home, in the office or somewhere else.

Here are some of the upcoming virtual training sessions we'll be doing over the next several weeks. For the full schedule of virtual offerings, visit the **FELTG Virtual Training Institute**.

Get it Right the First Time: Accepting, Dismissing, and Framing EEO Claims
February 22-23

Workplace Investigations Week
February 27-March 3

EEOC Law Week
March 13-17

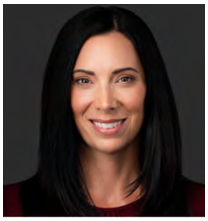
Nondiscriminatory Hiring in the Federal Workplace: Advancing Diversity, Equity, Inclusion and Accessibility
April 5

Drafting Enforceable and Legally Sufficient Settlement Agreements
April 12

Conducting Effective Harassment Investigations
April 25-27

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.

Masks and Tests: Here Come the COVID Discipline Cases
By Deborah J. Hopkins



It took less than a year of a quorum at the MSPB before we got our first two cases involving agency discipline related to COVID-19 – consequently, both from the Air Force. In one case, the agency prevailed. In the other, the Board mitigated the appellant's removal to a seven-day suspension. Let's take a look.

Opposed to Wearing a Mask
The appellant was a GS-06 pharmacy technician whose job duties included filling and refilling prescriptions, entering orders into a medical database, checking medication stock, inspecting the pharmacy, and consulting with patients and physicians. In March 2020, the agency imposed a mask mandate for anyone entering the medical center, including employees. The agency stationed personnel at the building's entry to enforce its mask policy, and to screen would-be entrants for fever. Once inside the facility, employees were permitted to remove their masks if they were able to keep physically distanced from other people.

In September 2020, the appellant was stopped twice at the entryway for not wearing a mask. The appellant subsequently informed agency officials she had "a sincerely held religious belief that precluded her from wearing a mask or other face covering." In November 2020, the agency imposed a more stringent mask policy, which required individuals in the building to be masked at all times unless they were alone in a room and behind closed doors. The next day, the appellant was told that if she did not wear a face covering, she would not be able to enter the building and report for duty.

The appellant contacted the EEO office and "began to absent herself from work in order to avoid the mask requirement." She exhausted her leave and remained absent from work for several weeks. In January 2021, the agency proposed her removal for (1) unauthorized absence and (2) failure to comply with established leave procedures. The removal was implemented in April 2021.

In her appeal of the removal, the appellant alleged affirmative defenses of religious discrimination and EEO reprisal. The AJ held - and the Board affirmed - the appellant did not prove her affirmative defenses: "[A]lthough the appellant's religious beliefs, her refusal to wear a mask, and the absences underlying her removal are linked, a finding that the appellant was removed for either unauthorized absences or failure to follow masking policy does not entail a finding that the removal was motivated by the appellant's religious beliefs."

The case includes a discussion of the agency's exhaustive efforts to consider a religious accommodation, and it's worth a read if you have any role in processing (or defending against) religious accommodation requests. In the end the Board sustained the removal. *Davis v. USAF*, DA-0752-21-0227-I-1 (Feb. 2, 2023)(NP).

Fabricating Wife's COVID-19 Diagnosis
The appellant in this case was a WG-10 composite/plastic fabricator. On April 28, 2021, he reported to the agency his daughter was exhibiting symptoms of COVID-19. The next day, he reported his daughter had tested positive for COVID-19, so the agency ordered him to stay home for 14 days.

The day before he was scheduled to return to work, he reported that his wife had just tested positive for COVID-19. He was ordered to stay home an additional 14 days. He finally returned to work on May 27, and "later submitted to the agency photos of two COVID-19 home testing kits, appearing to have positive results, with his wife and daughter's names written on the test cards."

On June 10, the appellant's friend called the agency and requested a day of LWOP for the appellant because he " was incoherent due

to medications he was taking." The agency, concerned for the appellant, requested the police perform a wellness check.

The police found the appellant wasn't home. After the wellness check, the appellant's second-level supervisor called the appellant's wife to inquire further. The appellant's wife stated her daughter had an exposure to COVID-19 at school but that "[n]o other Covid incidents happened," which contradicted the appellant's version of April events.

Over the next several days, the appellant was absent from work multiple times. He provided a note from a chiropractor to cover the absences. His supervisor, suspicious about the authenticity of the notes, called the medical office to confirm. The supervisor learned the appellant had not seen the chiropractor on at least two dates for which he provided medical notes. Also, he was not given a note excusing him from work.

As a result, the agency proposed removal, with three charges: (1) lack of candor; (2) disregard of directive; and (3) unauthorized absence. The deciding official sustained all three charges. The appellant filed a Board appeal but did not request a hearing, so the AJ issued an initial decision based on the written record, sustaining charges 1 and 2 but not charge 3. The AJ also denied the affirmative defenses of disability discrimination under the theories of disparate treatment and failure to accommodate. The AJ upheld the removal.

On PFR, the Board scrutinized the credibility of the evidence and the witness testimony. The Board held the agency did not prove Lack of Candor because, among other things:

- The statements about COVID-19 made by the appellant's wife were recounted secondhand by agency officials.
- When the appellant's wife spoke to agency officials, she was angry about being asked for personal medical information.
- While some of the appellant's statements are not entirely consistent, "we find that as a whole, the agency has presented insufficient evidence to prove by preponderant evidence that the appellant's statements regarding his wife and daughter testing positive for COVID-19 were untruthful."
- While the appellant has admitted he added an additional date to the medical note, he claimed his doctor authorized him to do so.
- There was conflicting evidence within the chiropractor's office about whether the appellant was seen on a particular date.

Because all three specifications failed, the agency did not prove Lack of Candor. The Board held the agency proved one specification of Disregard of Directive related to the appellant's improper leave request procedures.

Because the agency failed to prove Charges 1 and 3 and only proved one specification of Charge 2, the Board found removal to be unreasonable and mitigated the penalty to a 7-day suspension.

The Board's brief Douglas analysis relied on mitigating factors, including that "the appellant made contact with the agency to inform his supervisor that he would be absent, albeit not in the way in which he was instructed" and that "[the appellant] and his wife were having relationship troubles." It gives insight into the Board's reasoning, so it's worth a look. *Ortiz v. USAF*, DE-0752-22-0062-I-1 (Jan. 25, 2023)(NP).

While these cases are nonprecedential, they include a number of important takeaways and lessons about the current Board, which we'll discuss in more detail next month during MSPB Law Week. Join us March 27-31 on Zoom and we'll fill you in on everything you need to know. Hopkins@FELTG.com

Is This a New Type of Tangible Employment Action?
By Deborah J. Hopkins

When we discuss tangible employment actions in our EEO classes, we usually focus on facts in existing case law: a supervisor takes a pay-related action (such as a suspension, or non-selections) against an employee because of the employee's response to the supervisor's unwelcome sexual advances.

The Supreme Court has ruled that a tangible employment action constitutes "a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998).

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

A fairly new case from EEOC has seemingly broadened the type of action considered a "tangible employment action" in Federal agencies and has also included actions motivated not by an employee's responses to sexual overtures but by a supervisor's distaste for a complainant because of the complainant's sexual orientation. In this case, the complainant accused his supervisor of creating a hostile work environment based on sex, citing several examples over a span of four years. The complainant claimed his supervisor:

- Made negative comments about the complainant's sexual orientation in a chat message with a coworker.
- Was condescending to the complainant in emails.
- Verbally attacked the complainant about his breaks and lunch periods.
- Informed the complainant that he could only use certain doors when arriving to and leaving the workplace, making the door closest to the supervisor's workstation off-limits.
- Told the complainant that he was no longer allowed to "loiter" in the parking lot after work hours.
- Required the complainant to inform her when he was coming and going from the workplace, despite a maxi-flex schedule.
- Excluded the complainant from office discussions in an effort to get him to resign.

The agency asserted it was not liable because it exercised reasonable care to prevent and promptly correct the harassing behavior when:

- It followed its internal workplace harassment policy once the complainant made a claim of harassment.
- It allowed the complainant to maximize telework in order to avoid the supervisor while the agency worked to resolve the situation.
- It eventually transferred the supervisor to a lower-graded position within the agency.

In its FAD, the agency found the supervisor created a hostile work environment but argued there was no agency liability because the "[s]upervisor's actions did not result in a tangible employment action."

On appeal, EEOC disagreed and found the agency was liable:

> Despite this approved [maxi-flex] work schedule, Supervisor made it clear to Complainant that he was only allowed strict break and lunch times. Additionally, despite his maxi-flex schedule, Complainant was informed that he was to notify Supervisor any time that he was leaving his workspace. Lastly, Supervisor acknowledged that she informed Complainant that he was only allowed

> to use certain doors for exiting and entering. **We find these actions constitute tangible employment actions as they altered the terms and conditions of Complainant's employment.** [bold added]

Nathanial P. v. NPS, EEOC Appeal No. 2021000613 (Jan. 13, 2022).

We discuss the ever-changing world of hostile work environment harassment as part of our comprehensive EEOC Law Week, next held March 13-17. Join us for the day or the week; we'll be happy to have you there. Hopkins@FELTG.com

Can't Miss Webinars!

FELTG's 60-minute webinars provide, unique, helpful, engaging, and targeted training.

March 2: The New MSPB and Roller-Coaster Employees: Managing Up-and-Down Performance

March 9: Antisemitism and Other Religious Harassment in the Federal Workplace

March 23: Grappling With Employee Stress in the Workplace: Improve Performance and Morale in Your Agency

April 6: Dealing with Medical Issues in Misconduct Cases

April 13: Revisiting Existing Reasonable Accommodations

May 4: Make Your Best Case: Effectively Preparing Performance Narratives

May 18: Avoid the Pitfalls of EEO Reprisal

June 1: Do You Really Know How to Use the Douglas Factors?

Each live instructor-led session includes interactive activities and Q&A. Want to bring any of these classes to your agency? Email Training Director Dan Gephart at Gephart@FELTG.com.

Do the FELTG Check-in and Ensure Accommodation is Still Effective

By Dan Gephart

It was a reasonable accommodation success.

Until it wasn't.

The accommodation process is a fluid one. You can't provide an accommodation and then forget about it. This is particularly important now, as many employees with reasonable accommodations make their way back to the physical workplace.

Kristopher M. v. Department of Transportation, App. No. 2019001911 (EEOC 2020) provides a perfect lesson on the importance of continuous communication with employees AFTER they receive accommodations, something that we at FELTG have coined the "Check-in."

[**Editor's note:** For more on this topic, register for Revisiting Existing Reasonable Accommodations, a 60-minute webinar on April 13.]

Upon his hiring in 2005, an IRS agent requested and received a BAT keyboard as a reasonable accommodation. The agent had paralysis in his left hand and the keyboard allowed him to enter data with his right hand.

So far, so good, right?

Fast-forward seven years. The employee's typing workload increased, causing serious strain, fatigue, and a tingly pain in his right hand. The BAT keyboard was no longer an effective accommodation. The agent requested Dragon software in 2012, and the agency approved it. The software was installed on the employee's computer, and he was provided training.

So far, so good, right?

Unfortunately, the Dragon software did not work well with the agent's computer. His computer screen would freeze. Applications would just shut down. He was unable to simultaneously use the Dragon software with the other software programs required for his job (Word, Excel, etc.).

It is here, FELTG Nation, where the process broke down.

The agent struggled with the software and let the agency know. Per the EEOC decision, it appears that there was a back-and-forth between the reasonable accommodation staff and IT about who had the responsibility to address the employee's computer issues. Meanwhile, the employee went back to using the BAT keyboard. He developed carpal tunnel syndrome in his right hand and pain in his right arm and neck.

Even though it had twice listened to the employee and gave the employee his requested accommodation, the agency still failed to provide the employee with an effective accommodation, per the EEOC AJ.

On appeal, the commission determined the agency's efforts to deal with the Dragon software/computer issues were either unduly delayed or only partially implemented. The Dragon software was *not* an effective accommodation, the EEOC ruled. It ordered the agency to engage in a rigorous interactive process with the employee for a 60-day period to come up with effective accommodations.

Wouldn't you rather just do the FELTG Check-in with employee, see how the accommodation is working and make the adjustments, when necessary, rather than be ordered by the EEOC to conduct a specified period of the interactive process?

The FELTG Check-in is free and ensures that your employee has all the tools he/she/they need to do the job's essential functions and help the agency meet its mission. Skipping the FELTG Check-in could be damaging to productivity, morale, and the agency's bottom line. Beyond the required interactive process, the agency in the *Kristopher* case was required to:

- Pay the agent $75,000 in compensatory damages within 60 days.
- Pay the agent $68,761.69 in attorney's fees and costs ordered by the AJ within 60 days.
- Provide the supervisors and coordinators involved to take at least eight hours of reasonable accommodation training.

Remember: Your agency's obligation to provide an *effective* accommodation does not end when you provide an accommodation. You must ensure the accommodation is actually effective. Gephart@FELTG.com

Workplace Investigations Week is Almost Here

Learn what you can do to improve the way you conduct administrative investigations. This weeklong program, which runs Feb. 27 – March 3, emphasizes employee misconduct and harassment.

Workplace Investigation Week attendees will learn how to:

- Develop best practices and policies for conducting effective administrative investigations.
- Define what constitutes misconduct.
- Conduct successful interviews and handle difficult witnesses.
- And much more.

This class includes breakout sessions and workshops. Because of the interactive nature of the class, attendance is limited. Register now to guarantee your spot.

The Good News: Two FLRA Members Can Still Issue Decisions
By Ann Boehm

On Jan. 3, 2023, FLRA Chairman Ernest DuBester's term ended. This means the FLRA currently has only two members: now-Chairman Susan Tsui Grundmann, Democrat, and Member Colleen Duffy Kiko, Republican. With two members, the FLRA has a quorum that can continue to issue decisions. But will that happen with two members from different political parties? Several things indicate the answer to that question is, "yes."

Let's start by looking at what has happened since Jan. 3, 2023. The FLRA has issued six decisions since that date. That indicates that these two members, from different political parties, can indeed agree and issue decisions.

There is also historical information that suggests the FLRA will continue to issue decisions, even with two members from different political parties. From May 2000 to November 2000, Democrat Don Wasserman and Republican Dale Cabaniss were the FLRA's members. They issued 100 decisions during that time. That means they agreed 100 times.

From August 1995 to February 1996, Democrat Phyllis Segal and Republican Tony Armendariz were the FLRA's members. They issued 67 decisions during that time. That means they agreed 67 times.

Weird, isn't it? People from different political parties can actually agree on something.

The FLRA has been around since 1978. Throughout its existence, we have seen that Republican members can be a little more pro-agency, and Democratic members can be a little more pro-union. But there are limitations on how those tendencies impact on FLRA member decisions.

For one thing, the FLRA members are charged with interpreting the very detailed *Federal Service Labor-Management Relations Statute*. It says what it says.

In addition, the FLRA members have guidance from 44 years of FLRA case law interpreting that same statute. There are also 40-plus years of decisions from the U.S. Courts of Appeals and U.S. Supreme Court interpreting that statute.

So, what does this all mean? Chairman Grundmann and Member Kiko are likely to issue a lot of decisions while they serve together. If they disagree, there is no quorum, and no decision will issue. History suggests we will not see that occur often. And that's Good News.
Boehm@FELTG.com

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

This comprehensive Federal supervisory training event returns with seven specific sessions that give you the tools and skills to effectively manage in the Federal workplace circa 2023. This year's 60-minute sessions:

March 7: Why Supervisors Need to Use the *Douglas* Factors

April 4: Keys to Implementing and Managing a Successful Performance Opportunity Period

May 2: They Just Won't Show Up: Handling Excessive Absence

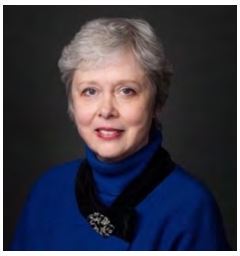
June 6: Ensuring Accountability with Hybrid and Teleworking Employees

July 11: Trends in Hostile Work Environment Harassment: 2023 Edition

August 8: Providing Reasonable Accommodation for Invisible Disabilities

August 22: What Supervisors Should Know About Official Time

When Clean Record Agreements Address Retirement: OPM Gets the Final Say
By Barbara Haga



In this third column of the series on Clean Record Agreements (CRAs), I am focusing on retirement. Before we return to the 2013 MSPB report Clean Record Settlement Agreements and the Law, we need to look at another reference.

OPM Guidelines
If you are in the business of settling cases, whether adverse actions or EEO, you should have the OPM Settlement Guidelines at your fingertips. OPM's document opens with: "Since OPM administers the retirement funds, agencies may not agree to matters in settlement agreements that give more than what the retirement regulations would provide." The report includes the following illustration:

> For example, assume that an employee who meets the statutory age and service requirements for immediate retirement is discharged on grounds of misconduct. A court or administrative body could order reinstatement of the individual with back pay if it determined that the discharge was erroneous. It could not order a two-grade level promotion effective three years prior to the removal at issue. A claimant may urge that such a provision be included in a settlement, to create a higher annuity, by altering the "high-three" year average pay that is part of the annuity computation formulas under both CSRS and FERS. Because the court or administrative body could not order such a retroactive promotion, the settlement may not provide it.

Disability Retirement. OPM guidelines also include limitations related to eligibility to retire under disability provisions. OPM states the application must be filed within one year of the date of separation unless the employee was mentally incompetent. Also, per OPM, it is inappropriate for an agency to settle an action by putting the employee in a non-pay status to a date within the one-year period solely to allow the individual to file for disability absent compelling evidence that the individual was actually mentally incompetent.

The Board and OPM have not always been on the same page regarding the issue of settlements that change the date of a separation action to a much later date, which brings the appellant into the one-year period for filing for disability retirement. In *Parker v. Office of Personnel Management*, 93 MSPR 529, (MSPB 2003), *aff'd* 91 F. App'x 660 (Fed. Cir. 2004) the Board reversed itself on whether OPM could deny benefits in such situations.

Parker stands for the proposition that when OPM is not a party to a settlement agreement, such as when an agency settles an erroneous removal with an employee, it can review such a settlement to determine if a separation date was fixed solely to meet statutory requirements to entitling an appellant to annuity benefits. In *Parker*, the agency gave a retroactive four-year term appointment in the settlement that would allow the employee to gain additional service time, which would qualify him for discontinued service retirement (DSR). Once that term ended, he would be eligible to apply for DSR. OPM found the appointment not qualifying service, because Parker was on military duty for some of the time. OPM determined the appointment was simply a construct to allow the employee to obtain retirement benefits when he would have otherwise not been eligible.

In prior cases, the MSPB had found a settlement entered into the record of an appellant's appeal for enforcement purposes was equivalent to a final Board order in all respects, and that OPM was required to affect its terms when adjudicating the appellant's entitlement to retirement

benefits. In *Parker*, however, the Board found that OPM was not obligated to credit the appellant with service based on such a "fabricated" appointment.

Inability to Perform. With an inability to perform action, if the individual subsequently applies for disability retirement, the case is subject to the *Bruner* presumption. If the agency removes for inability to perform, then the employee is presumed to meet the criteria for disability retirement. *Bruner v. Office of Personnel Management*, 996 F.2d 290 (Fed. Cir. 1993). However, OPM does not apply the presumption unilaterally.

> For example, an individual is separated for misconduct or other non-medical related performance grounds, but, by agreement, documentation is changed to base the separation on medical inability to perform the job. Where this is done merely to enhance the individual's application for a disability annuity, OPM will not apply the Bruner presumption. If the medical evidence demonstrates that the original personnel action was erroneous because the individual was unable to perform the job and the agency was unaware of the medical conditions at the time of separation, OPM then will apply the presumption.

The bottom line: OPM must approve the disability of discontinued service retirement. While you may settle with the intention that retirement benefits will be granted to the employee, only OPM can make that determination. OPM may deny the benefits if it believes the action was created solely to enable the person to obtain retirement benefits for which he would otherwise not have been eligible. If that happens, there goes your settlement.

More from MSPB

A disability retirement application requires a supervisor's statement about the employee's limitations and the impact of those conditions on performance, conduct, and attendance. The statement is completed on an official government form and the person completing it must sign and certify that the information is true to the best of her knowledge. Not answering questions on the document is not an option. The report explains the issue and the options to deal with it:

> Occasionally, parties will settle an appeal with the expectation that the appellant will apply for disability retirement. Under these circumstances, the parties should anticipate that the agency's obligation to provide a truthful supervisor's statement may conflict with the general disclosure limitations of the CRA. A well-drafted CRA should take this into account and address the supervisor's statement separately, adjusting the parties' expectations of what the supervisor's statement may (and must) contain, and defining any limitations on the information that the agency may provide. As discussed below, parties have taken different approaches to this matter, including promises to support an application, promises not to oppose an application, and promises to refrain from including negative remarks in the supervisor's statement.

The report includes examples of cases where those various options were used. The case where the agency was found not to have breached the settlement agreement was *Miller v. USPS*, 90 MSPR 550 (MSPB 2002). In *Miller*. the settlement agreement stated the agency would not affirmatively oppose the appellant's disability retirement application. However, the agreement also added that it did "… not require the agency to provide incorrect information to the Office of Personnel Management." The Board found the information provided by the agency, which ultimately led to a denial of disability retirement, was factual and did not constitute a breach of the agreement. Haga@FELTG.com

[**Editor's note:** Join FELTG for Clean Records, Last Rites, Last Chances, and Other Discipline Alternatives, a two-hour virtual training on May 17.]

New Processing Rules for COVID-19 Workers' Comp Claims Take Effect
By Frank Ferreri

As the old year came to a close, the U.S. Department of Labor's Office of Workers' Compensation Programs (OWCP) issued a Federal Employees' Compensation Act (FECA) Bulletin (No. 23-02, to be exact) announcing changes that would be coming related to COVID-19 claims in the new year. Well, it's now February, and those changes took effect Jan. 27. So, what's the new setup? The following chart breaks it down.

Topics	Explanations
COVID-19 diagnoses prior to Jan. 27	A COVID-19 positive test result that occurred prior to Jan. 27 triggers application of the steps in the American Rescue Plan Act (ARPA), which purport to make it easier for Federal employees to file and receive benefits for COVID-related workers' compensation claims. For post-Jan. 27 positive results, the five basic elements set forth in 20 CFR §10.115, which apply to Federal workers' compensation claims generally, govern.
What evidence is needed to establish a claim under 20 CFR §10.115?	1. The claim must be filed within FECA's time limits. 2. The injured person must have been, at the time of injury, an employee of the United States as defined in 5 U.S.C. § 8101. 3. The claimant must provide evidence: • Of a diagnosis of COVID-19, and • That establishes they actually experienced the events or employment factors alleged to have occurred. 4. The alleged events or employment factors must occur while the employee was in the performance of duty. 5. The COVID-19 must be found by a physician to be causally related to the established events or employment factors within the employee's Federal employment. (Note: It's not enough that the condition manifests itself during a period of Federal employment, nor is it enough that the claimant believes that factors of employment caused or aggravated the condition).
What form should be used?	Claims for COVID-19 diagnosed after Jan. 27 should generally be filed on the CA-2. This is because in most cases, there is no clear, identifiable incident or incidents over a single day or work shift to which an injured worker can specifically attribute a COVID-19 diagnosis. Now that Congress intends to end specialized treatment of COVID-19 claims, the coronavirus will receive the same treatment as other airborne infectious diseases "where the specific etiology is unclear."
An exception allowing use of the CA-1	A CA-1 can be used if the event alleged to have caused the diagnosed COVID-19 is identifiable as to 1) time; and 2) place of occurrence. It must be a specific event or incident or series of events or incidents during a single day or work shift to warrant CA-1 usage.

The role of claims examiners	A claims examiner (CE) must make a factual determination by reviewing the evidence to decide whether the claimant actually experienced the specific events or employment factors claimed on a CA-1 or CA-2. A CE may credit statements made by the claimant regarding facts of which the claimant has direct knowledge. OWCP provided two examples: 1. If the claimant alleges that they were in close contact to 10 individuals at work, which the claimant believes resulted in the claimant getting COVID-19, OWCP may accept as fact that the claimant was in close contact to 10 individuals at work. 2. If the claimant alleges their COVID-19 is the result of "sitting next to an individual that had tested positive for COVID-19," OWCP may accept as fact that the claimant sat next to the individual but would require the claimant to provide evidence in support of the allegation that the individual sitting next to them was COVID-19 positive.
Report required	A rationalized medical report establishing a causal link between a diagnosis of COVID-19 and factors of Federal employment is required for all claims of COVID-19 diagnosed after Jan. 27.
Medical documentation	One holdover from the pandemic era is the medical evidence required to establish a COVID-19 diagnosis, which is any of the following: 1. A positive polymerase chain reaction (PCR) or antigen COVID-19 test result. 2. A positive antibody COVID-19 test result combined with contemporaneous medical evidence that the claimant had documented symptoms of and/or was treated for COVID-19 by a physician. 3. A COVID-19 diagnosis from a physician together with rationalized medical opinion supporting the diagnosis and an explanation as to why a positive test result could not be obtained (this could apply when a claimant has a false negative test).
Self-administered COVID-19 tests	Although at-home over-the-counter test kits are easy to use and much easier to find than they were not too long ago, they are insufficient to establish a diagnosis of COVID-19 under FECA. Why? There's no way for FECA claims staff to affirmatively establish the date and time that the sample was collected or that the sample collected was from the injured Federal employee making the claim.
Exception for self-administered COVID-19 tests	If the administration of a self-test was monitored by a medical professional and the results are verified through documentation submitted by that professional, then an at-home test could be used in support of a claim.

OWCP's treatment of COVID-19 reflects the stance of the Federal government (and probably broad segments of the general population) that the new normal is shifting from the pandemic phase to the endemic era.

The long and short of it is that, for purposes of Federal workers' compensation coverage, COVID-19 will receive treatment that is akin to other infections caught on the job. Info@FELTG.com