

Module 5

Module Introduction

Welcome to Module 5. In this module, we will explain the impact of Prohibited Personnel Practices (PPP) on supervisors and managers. While going through this module, keep the following in mind:

- While Merit System Principles are philosophical guidelines, Prohibited Personnel Practices are specific statutes that can be violated.
- The Merit principles provide a framework for proper personnel management. PPP's set limitations by making certain specific practices illegal.
- "Personnel authority" is the authority to take, direct others to take, recommend, or approve any personnel action. People with personnel authority--managers and supervisors--are charged with personal adherence to the Merit System Principles and avoidance of Prohibited Personnel Practices.

What Constitutes a PPP Violation?

The PPPs are codified in Section 2302, Title 5, United States Code. There are currently 12 PPPs.

These conditions will be illustrated through the case examples in this module.

The MSP- Making it Work For You

"Prohibited Personnel Practices" are actions a Federal employee who has personnel authority may not engage in.

Employees who have an authority to take, direct others to take, recommend, or approve personnel actions shall not:

(1) Discriminate for or against any employee or applicant for employment on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16); on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a); on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)); on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation.

- Bad - Let me look at John and all of the other candidate's performance and judge on the basis of merit. I'm not going to hire John.

- Good - Let me look at all of the applicants and select on the basis of merit.

(2) Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action except as provided under section 3303(f).

- Bad - Senator Jones wrote a recommendation for Jane, one of his constituents, who he does not know. Based on that recommendation, I'm going to offer Jane the job.
- Good - Senator Smith wrote a recommendation for Scott, a former employee, based on Scott's qualifications. I considered this recommendation while reviewing Scott's application.

(3) Coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee of applicant for employment as a reprisal for the refusal of any person to engage in such political activity.

- Bad - Because my subordinate did not sell tickets for the political meeting, I'm going to reassign him to another position.
- Good - I'm working for the local political party after work and have not encouraged any subordinates to join me.

(4) Deceive or willfully obstruct any person with respect to such person's right to compete for employment.

- Bad - Let's lie to John by telling him that the time to apply for the vacancy has passed.
- Good - I'll provide all applicants with an equal opportunity to compete for the position.

(5) Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.

- Bad - I'm going to misrepresent to Dave that the job requires 75% travel so he will withdraw.
- Good - I'm going to encourage all of my subordinates to apply for the vacancy in our office.

(6) Grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or

manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

- Bad - I'm going to temporarily promote Ron to a team leader position to give him a leg up when he applies for the permanent position.
- Good - I'm going to temporarily promote Ron to a team leader position because we are shorthanded and need to get the agency's work done.

(7) Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official.

- Bad - My son John is applying for a job. I'm going to appoint him.
- Good - My daughter is applying for a position in the agency where I work. I will excuse myself from the selection process.

(8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of (A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences (i) a violation of any law, rule or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or (B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences--(i) a violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

- Bad - Lisa has really made us look bad by disclosing that we broke the law. Let's detail her to a position in Guam.
- Good - I'm going to promote an office that is friendly to whistleblowers, by encouraging employees to disclose incidents of wrongdoing.

(9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of (A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation; (B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A); (C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in

accordance with applicable provisions of law; or (D) for refusing to obey an order that would require the individual to violate a law.

- Bad - That Sally!!! I'm going to suspend her for three days for filing that grievance.
- Good - Sally's filing of a grievance is protected activity.

(10) Discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States.

- Bad - I'm going to fire John because he's a member of the Firecracker Club.
- Good - We won't fire Nancy just because she spends her weekend at a nudist colony.

(11) (A) Knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or (B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement.

- Bad - I don't see why we should give veterans preferences. My friends and I protested during the Vietnam War.
- Good - Be aware of and comply with any special statutory exceptions.

(12) Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title. This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

- Bad - I'm going to release Charles' information in violation of the Privacy Act.
- Good - I won't violate any law, rule or regulation that implements a merit system principle.

The PPPs in Action

Now let's take a look at the Prohibited Personnel Practices in action. You will be presented with some real world case examples that demonstrate the PPPs at work. Please note that these are adaptations of actual cases. These cases are provided as guidance only. The facts of a specific case will vary. Consult your Human Resources Department for specific guidance.

Is There a Doctor in the House?

Dr. Williams applied for a position as a management analyst with the National Institutes of Health. As a Vietnam Veteran, in accordance with veteran preference rules, Dr. Williams was placed ahead of non-veteran candidates for the position. Subsequently, NIH officials informed Dr. Williams that her candidacy was preventing them from selecting a non-veteran candidate that they wanted to hire. Officials from NIH offered Dr. Williams a temporary position if she would withdraw her application. Unbeknownst to Dr. Williams, management intends to hire the desired non-veteran candidate even if Dr. Williams does not accept their offer. Has a PPP occurred?

Answer – 5 U.S.C. § 2302(b)(5) makes it a prohibited personnel practice to influence a candidate to withdraw from competition. Furthermore, it is a violation of 2302(b)(11) to knowingly take, recommend, or approve (or fail to do so) a personnel action that violates a veterans' preference requirement; therefore, the involved officials might be subject to disciplinary action. See 5 U.S.C. § 2302(e)(2).

Musical Chairs

Dr. Williams applied for a position as a management analyst with the National Institutes of Health. As a Vietnam Veteran, in accordance with veteran preference rules, Dr. Williams was placed ahead of non-veteran candidates for the position. Subsequently, NIH officials informed Dr. Williams that her candidacy was preventing them from selecting a non-veteran candidate that they wanted to hire. Officials from NIH offered Dr. Williams a temporary position if she would withdraw her application. Unbeknownst to Dr. Williams, management intends to hire the desired non-veteran candidate even if Dr. Williams does not accept their offer. Has a PPP been committed?

The agency violated 5 U.S.C. § 2302(b)(6) by granting a preference that is not authorized by law, rule or regulation, for the purpose of improving a particular individual's chance for employment. Specifically, DOL officials were not authorized to narrow the scope of competition by adding a skill or ability that was not necessary to the position, for the purpose of improving the prospects of Ms. Brown, their preferred candidate.

The Ball is in Your Court

A computer specialist in a small federal agency notices that his supervisor has been charging computers to the agency budget and then selling them at local computer auctions for his own profit. The specialist then reports this information to the agency head's complaint hotline. The agency head initiates an investigation of the supervisor's actions. The supervisor learns of the computer specialist's disclosure and decides to reassign him to a position upgrading computers in the agency's field offices, performing duties that he has never done before. The specialist is upset about the reassignment. He feels that he is being

punished for blowing the whistle on his supervisor. Has the supervisor engaged in reprisal against the whistleblower?

Result: Yes. The reassignment was taken because of the computer specialist's disclosure in violation of 5 U.S.C. § 2302(b)(8).

Is Jello Hazardous to Your Health

(1) A pipefitter with a large federal agency finds cracks in several water pipes leaking a viscous green liquid. Co-workers mop up the liquid. Afterward all employees who came in contact with the liquid suffer acute respiratory distress. The pipefitter reports to his supervisor that there is a green liquid leaking from the water pipes and that several employees suffered respiratory problems after coming in contact with the liquid. Has the pipe fitter made a protected disclosure?

Answer – the pipefitter has made a protected disclosure of a substantial and specific danger to public health or safety. The danger is specific because it affects the pipefitter and several co-workers and the harm which has already occurred, i.e., respiratory distress, would be considered serious and substantial. Although the danger was to a limited number of federal employees and not the general public, it may still be considered substantial and specific.

(2) The pipefitter filed an incident report with the Director of Safety. The Director of Safety is upset that the pipefitter filed a formal incident report instead of informally trying to resolve the problem. She also thinks that, if the pipe fitter had repaired the cracked pipes, there would be no problems now. Acting out her anger with the pipe fitter, the Director decides to deny the pipe fitter's wife, who also works in the Safety Department, a career ladder promotion. Has whistleblower reprisal occurred?

Answer – Yes, reprisal has occurred. An employer may not take or fail to take a personnel decision because of an employee's relationship with a whistleblower.

(3) The agency presents evidence that periodically it flushed the water pipes with green Jello in order to clear mineral deposits from the pipes. It contends that the Jello was not hazardous in any way and, therefore, the disclosure of the pipefitter is not protected. Is the pipefitter's disclosure protected?

Answer – The disclosure is still protected. The pipefitter saw a liquid which, to his knowledge, should not have been in the water pipes, and he observed respiratory problems apparently associated with contact with the liquid. He had a reasonable basis to believe that there was a significant health or safety hazard. The employee does not have to prove that the condition reported established a substantial and specific danger to public safety, but he must come forth with proof to establish that the matter reported was one that a reasonable person in the employee's position would believe evidences a substantial and specific danger to public health or safety.

Don't Hate Me Because I'm Forgetful

Joe Smith a GS-14 physicist at the Nuclear Regulatory Commission, has wanted to be promoted to a GS-15 and on several occasions has told his boss, Wilma Grande, of this fact. Although Joe has always received satisfactory appraisals at the GS-14 level, Wilma does not think he is capable of performing GS-15 work. Wilma receives notification that a GS-15 physicist position is opening in her branch. In accordance with NRC policy, Wilma is instructed to post the vacancy announcement on the bulletin board in the office. Wilma answers a phone call and forgets that the vacancy announcement is on her desk. The announcement is never posted and Joe learns about the position after it is filled. Joe files a complaint with OSC. Has a PPP been committed?

There does not appear to be any violation here because Wilma has not shown any intent to willfully obstruct Joe's right to compete. The facts show that even though Wilma did not believe Joe was qualified for a GS-15 position, she did not act intentionally to obstruct Joe from competing. Given the lack of evidence supporting a 2302(b)(4) violation, it is unlikely that there would be any corrective or disciplinary action appropriate in this case.

The Squeaky Wheel Doesn't Get the Grease

Lena Scully reported that after she filed an agency grievance challenging her 1999 performance appraisal, her supervisors detailed her to Kansas and denied her a performance bonus that she was due. Has a PPP been committed?

It is a prohibited personnel practice under 5 U.S.C. § 2302(b)(9) to retaliate against an employee for exercising any appeal, complaint or grievance right granted by law, rule, or regulation. Detailing her and denying her a performance bonus are personnel actions that constitute reprisal for filing the grievance.

Module Summary

You have completed Module 5. Federal managers should avoid committing Prohibited Personnel Practices. Consequently, make sure you have a clear understanding of the 12 PPPs. To help you, click on the print icon below for your copy of the PPPs.

If you are aware of the PPPs, it is easy to avoid a violation. If you need help or have a particular situation where you are not clear, contact your agency HR department for assistance.