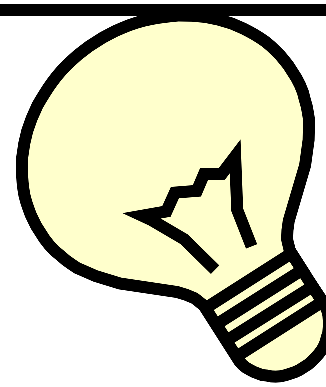
The

Illuminator

Shedding Light on the HR World



3-2012 Article Directory

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This publication is issued to ensure the Fort Benning commanders, managers, supervisors, and employees are kept informed of employment and staffing issues. Monthly issuances will contain updated information on specific employment topics (i.e., compensation, recruiting procedures, travel entitlements, classification issues, updates on USA Staffing, the newly deployed recruitment tool, etc).

This newsletter is an apercu of articles written by CPAC staff [members] as well as information excerpted from various sources of personnel-related documents. While it is readily acknowledged that this information may be available through other media, this compilation is an attempt to provide a readily available source of information and to preclude our stakeholders from having to personally plunder through numerous personnel articles

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Retirement, Life/Health Insurance, TSP, Social Security and Such

Annuities: What you Should Know. The risk of outliving one's retirement savings is growing. Increased life expectancies coupled with declines in the financial markets and home equity over the past few years have made it much more challenging for Americans to create adequate, lifelong income. In fact, the Employee Benefit Research Institute has found that nearly half (47%) of workers near retirement are predicted to run out of money and won't be able to cover their basic expenses and uninsured health care costs.

To overcome these challenges, many are turning to annuities. In June, the Government Accountability Office issued a report advocating the use of immediate annuities to protect one's retirement portfolio against underperforming investments, inflation and longevity risk. But how many Americans really understand annuities? What does one need to know?

Annuities offer unique benefits and can be an important component of a sustainable income-producing, diversified retirement portfolio. And, according to Insured Retirement Institute research, 92% of investors who own annuities have a higher confidence in the financial stability of their retirement compared with those who do not.

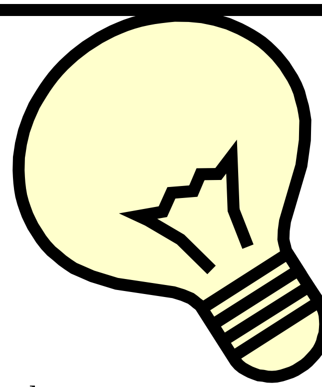
Creating a predictable stream of retirement income can be a daunting task, though, one that requires a comprehensive income plan and careful analysis. Many will find it's easier to develop such a plan with the help of a qualified financial professional. Yet even when working with a financial professional investors should understand some of the fundamentals of annuities.

Here are the basics:

First, an annuity is a contract with an insurance company designed to protect the investor from the risk of outliving his or her income. With annuities one's investment is converted into periodic payments that can last for a specified period or life.

Annuity types

There are a wide variety of annuity products available, but really four basic types. Their differences revolve around when payments begin and how the money is invested. So there are immediate and deferred annuities as well as fixed and variable ones. With an immediate annuity the payments begin right away, while the payments with a deferred annuity begin later. The growth of a variable annuity is based on the market performance of its underlying investments, while the growth of a fixed annuity is pegged to an interest rate.



Options and riders

Like most products, annuities have evolved over time to address consumer needs, so there are now various options and riders.
Some variable annuities have riders that allow investors the option of higher income payments if the value of the underlying securities rises, yet lock in a minimum payment if they fall.

There can be options to withdraw without penalty some, or in certain cases all, principal if it's needed for medical or long-term care expenses. (Withdrawals reduce the principal value of the annuity, though.)

Some options enable the payments to continue after the original owner's death, or allow the owner's beneficiary to get a lump-sum payment.

Special features and add-ons usually cost extra, but they can be worth the expense if they're right for your particular financial situation and retirement goals.

Tax treatment

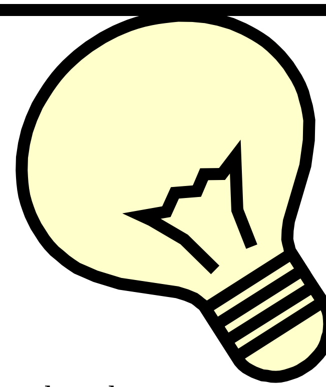
Annuities are tax-deferred investments, so you don't pay taxes on accumulated earnings until you withdraw your money, and then only your earnings are taxed as ordinary income. Annuities also don't have contribution limits, like IRAs and 401(k) plans. While there are no additional tax advantages to holding an annuity outside an IRA, many investors are doing this because of the benefits they provide.

If you decide to take your money out early, you may face fees called surrender charges,. And if you're not yet 59.5, you may also have to pay an additional 10% tax penalty on top of ordinary income taxes. A death benefit is available with most variable annuities, but if you do take an early withdrawal, your death benefit and the cash value of the annuity contract will be reduced.

An annuity is a contract between you and an insurance company, and it's sold by prospectus. While it may take some time, read that prospectus; it describes risk factors, fees and charges that may apply. Variable annuities have fees and charges that include mortality and expense, administrative fees, contract fees and the expense of the underlying investment options.

Rates and performance

An annuity is an investment and it should be evaluated, in part, on its performance. Consider the historical returns of the underlying investments for variable products and check not just the current rate, but the rate history for fixed and indexed annuities.



Fees

Like all investments, annuities charge fees. These fees vary greatly by product, though. Investors should understand and ask their financial adviser about the fees and charges they will incur. Some common ones include:

Mortality and expense risk charges. These charges compensate the insurer for the annuity guarantees and benefits.

Surrender charges. These charges help reimburse the insurer for sales expenses such as commissions if the investor withdraws money from the annuity early. Investors should check the length of the surrender period when evaluating annuities, since they vary by product.

Investment fees. These expenses are deducted from an annuity's underlying investments, and pay for the management and distribution of those underlying investments.

Strength of the insurer

An annuity is a promise to pay income, but that promise is only as good as the company making the promise. Investors need to look into the reputation and financial strength of company offering the annuity.

One of the benefits of an annuity is the guaranteed retirement income. Whether the economy is good or bad, an annuity pays a minimum amount every month, a predictable stream of income in uncertain times. But it's important investors take the time to understand these products and carefully evaluate their options.

While annuities contain guarantees and protections subject to the issuing insurance company's ability to pay, these guarantees don't apply to any variable accounts and investments subject to investment risk, including possible loss of your principal.

<u>Medicare Changes for 2012</u>. Retirees and survivors who have elected to be covered by Medicare Part B have every reason to be confused. In 2010 and 2011, retirees and survivors didn't receive a cost-of-living increase in their annuities or, for those who were eligible, in their Social Security benefits. However, because of a "hold harmless" provision in the Social Security Act, most of those who were receiving Social Security benefits didn't have to pay more for their Part B premiums. On the other hand, new Part B enrollees and those not receiving a Social Security benefit (including, generally, those retired under CSRS) saw their premiums go up two years in a row.

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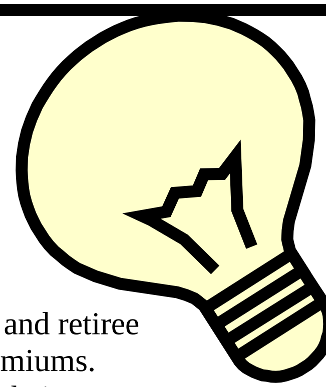

This year things are different. Because the freeze on Social Security benefits and retiree COLAs ended in 2012, everyone enrolled in Part B saw a change in their premiums. Most of those who had been protected by the “hold harmless” provision saw their monthly premium rise by $3.50 from $96.40 to $99.90, while most of those who hadn’t been protected saw their monthly premiums decrease by $15.50, from $115.40 in 2011 to $99.90 in 2012.

I used the word “most” in the previous paragraphs because, as you may remember, the premiums for Part B are tied to income levels. While most federal retirees fall into the lowest bracket – those with an individual income of no more than $85,000 or joint filers with an income of $170,000 or less – others must pay higher monthly premiums. For example, those with individual incomes of between $85,001 and $107,000 (joint, $170,001 and $214,000) will pay $139.90 a month. Those with individual incomes of between $107,701 and $160,000 (joint, $214,001 and $320,000) will pay $199.80. And those with individual incomes of between $160,001 and $214,000 (joint, $320,001 and $428,000) will pay $259.70. Finally any enrollee with an individual income above $214,000 or joint income above $428,000 will pay $319.70.

While the combination of a Federal Employees Health Benefits plan and Medicare Parts A and B provides maximum protection from out-of-pocket coast for health care, the debate continues about whether enrollment in Part B is worth the cost. There isn’t any easy answer. As is often the case, one size doesn’t fit all. The decision has to be based on what you expect to get in return for what Part B premiums will cost you, both now and in the future.

How to Invest in 2012. There are plenty of reasons to be concerned about our economic future. Headlines from Europe scream about countries defaulting with investors in Greece potentially taking a 70% loss on their investments as the Greek government tries to cut back on spending while dealing with rioting from those who want the spending to continue; a downgraded credit rating for numerous countries including many in Europe as well as the credit rating of the United States; a federal budget deficit that is getting much larger each year; and concerns about a new recession while the most languid economic "recovery" in the United States since World War II has a weak pulse with unemployment over 8%, even considering we do not count many people who have given up looking for work; and a labor participation rate that is the lowest in decades.

With more than 10,000 baby boomers turning 65 each day, many of these people are retired or will be retiring very soon. Maintaining financial stability is critical for them. So where should you put your money now in order to avoid a person financial calamity?

The Money Show was held in Orlando, Florida this month and attended by about 7000 people. No statistics are released on the average age of attendees but it is a safe bet that the baby boomers are by far the most dominate demographic group. The event brings together financial advisors, investors, financial columnists, authors about finance, and advice "from some of the best minds in the advisory business."

The conference is not about investing, not politics, but federal policies and political decisions, particularly during an election year, have a significant impact on the economic climate and investment decisions.

Here is a summary from some of the speakers at this show and how they advise Americans to invest in 2012.

Safety vs. Growth

One major concern is balancing the safety of your assets while trying to increase your assets and to come out ahead of inflation. We all want our investments to increase in value. We don't want to invest in something that will result in losing money we already have.

That balancing act is not as easy as it sounds. For example, investing in Treasury bonds is very safe. But an investor in Treasury bills can lose money. Stated simply, putting money into the G fund will ensure that you do not lose the dollars you invest. But that is not the entire picture. The interest rate G fund investors receive is less than the real rate of inflation. Those buying Treasury bills are losing money each year because the rate of return is less than the loss of purchasing power of your investment due to inflation.

Over time, returns in the stock market are often a better way to grow your investment but the stock market is much more volatile.

Does the American Future Look Like Greece Today?

Ed Finn is the editor and president of *Barron's*. In a keynote address to conference participants, he offered his opinion on the investing climate in America and his view of what may is likely to occur in coming months.

He noted that the European Union (EU) has been a boon for Germany. Germany has a world class manufacturing capacity and expertise. The EU has given Germany a chance to sell its products throughout Europe and the world as southern European countries are less sophisticated and less able to compete in Europe and other world markets. Germany will assume an increasingly influential role in the EU and in the world.

He says the United States needs a government that is leaner, more efficient and less expensive rather than doing things the "old fashioned way" - hiring more people to accomplish work that could be done more efficiently and issuing regulations for more centralized control of economic activity.

In Finn's view, if President Obama is re-elected, the U.S. economy will probably grow about 3% a year. If a Republican is elected with a Republican Congress, he predicts our economic growth will rise to 10% a year or more.

His prediction: In 10 years, it is possible that the United States will be in the same position that Greece is in today. The massive debt and interest on the debt will create social unrest, economic stagnation, and high unemployment. It will also mean a less prosperous future for our children.

His investment suggestions: If Barack Obama wins the election and Republicans control Congress, he suggests putting up to 40% of investments into high quality stocks; up to 30% in short term bonds and up to 10% in gold. Presumably, the remainder of an investment portfolio would go into intermediate term corporate bonds or other alternative investments for diversification in an economy that is stagnating.

"Market is Rigged"--Go for Dividends Instead of Interest

Louis Navellier is chairman of a company managing $5.2 billion in assets and author of four investment newsletters. He is forthright in his opinion of our economic situation noting that the Federal Reserve has been politicized and no longer functions as an independent entity. If the federal government raises interest rates, the rate increase will "blow up" the government because of the amount of interest we would have to pay on our massive (and growing) federal debt.

Since October 2011, 91% of long term Treasury bills have been bought by the Federal Reserve. In effect, says Navellier, the "market is rigged" to keep interest rates low. As the Federal Reserve tries to manipulate the market to force investors to invest in stocks and other riskier assets, the impact on the 30-year Treasury bond is distorted and impacts investor actions.

Interest rates on some Treasury bills have plunged. If the interest rates increase, which would happen in a free market, the amount of debt owed by the federal government would rise dramatically.

Government actions are also distorting the stock market. With interest rates being forced to low levels, many large companies are borrowing money to buy back their own stock. Dividends are taxed at a rate of 15%. Taxes on interest are much higher. For some investors, they will pay as much as 35% on interest they receive.

In other words, those who invest in bonds will pay more in taxes and also receive very low interest payments. Companies are generally increasing dividend payments and higher grade stocks are becoming more valuable and likely to be a better investment in 2012. The artificially low rates undermine the value of the dollar as other countries will be paying higher interest rates. Americans will be sending more money out of the country to receive the higher interest rates. This will fuel inflation and means that what we pay for necessities such as food and gas will be going up more in the future.

As we have noted before, the way the federal government calculates inflation in our economy is not realistic for the actual expenses of many people. There is likely to be significant inflation in some goods and services this year even if the official inflation rate remains low.

Diversify, Diversify, Diversify

Richard Band has been providing conservative investment advice for a number of years. His advice to investors: shift your allocation of assets toward fixed income investments by taking profits on stocks when there is a market rally. He prefers conservative stock funds and also favors putting some investment assets into defensive assets such as gold or gold mining stocks.

Obviously, Thrift Savings Plan investors are more limited in their TSP options but his advice to diversify is worth heeding. He sees several factors that indicate the current stock market rally is nearing an end and that we will not have an exceptionally strong bull market for some time, including the fact that 10,000 baby boomers are turning 65 every day now. People who are retired or about to retire tend to sell more stocks and put their money into more conservative assets.

In short, there is plenty of pessimism about the American economy. Generally, advisors are conservative and urge diversification into relatively safe investments, including large company stocks. No doubt, the confidence of these financial advisors, economists and investors will remain low until high government spending and increasing deficits are reduced.

Employment-Related News

Obama Signs Federal Pension Provision. It's official—President Obama on Feb. 22 signed into law the requirement that employees who join the federal workforce after Dec.

31, 2012, pay a higher percentage of their salary toward their pensions. Current federal employees will not be affected by the new requirement.

Those new employees hired after Dec. 31 who have less than five years of creditable federal service will pay 3.1 percent toward their pensions, 2.3 percent more than the 0.8 percent paid by current employees under the Federal Employees Retirement System.

The change was part of **H.R. 3630**, the Middle Class Tax Relief and Job Creation Act, which extends through Dec. 31, 2012, the payroll tax cut, funding for unemployment insurance benefits, and a delay in the reduction of Medicare payments paid to physicians.

GAO Highlights Monetary Advantage of Keeping FECA Past Retirement Age. A new study from the Government Accountability Office may provide more ammunition for lawmakers intent on transitioning retirement-age beneficiaries of Federal Employees' Compensation Act benefits out of that system and into federal retirement systems.

The FECA program provides untaxed cash benefits and medical benefits to feds who suffer disabilities resulting from work-related injuries or diseases. Currently, FECA beneficiaries who have no dependents receive 66.6 percent of their pre-injury salaries; beneficiaries with dependents receive 75 percent. Beneficiaries' employing agencies assume the cost of the benefits, which are administered by the Labor Department's Division of Federal Employees' Compensation in the Office of Workers' Compensation Programs.

Because FECA beneficiaries draw more income from FECA than they would as retirees, some recipients are staying in the disability system after they have reached retirement age, rather than file for retirement and enter the Civil Service Retirement System, for example.

Some lawmakers are trying to use legislative means to compel those older FECA beneficiaries to retire. The Senate Homeland Security and Governmental Affairs Committee in November approved a bill, the **21st Century Postal Service Act** (S 1789), which includes measures that lower FECA cash benefits for beneficiaries past retirement age as a means to discourage them from remaining in the system. The committee took up the postal bill again this year, and filed **a report** on the legislation last month.

The FECA reform measure was included in the postal bill because the U.S. Postal Service has the most beneficiaries in the program—130,483 in 2010—or 43 percent of the 306,905 FECA beneficiaries across the federal government, **according to GAO**. The Department of Veterans Affairs was next, with 9 percent of beneficiaries (26,157), and then the Department of Homeland Security, with 8 percent (25,408).

GAO said that in 2010, 10 percent (31,880) of all FECA beneficiaries were long-term, full-time beneficiaries. Of those, 10,873—or 34 percent—were at full retirement age as defined under Social Security.

“Compared to their federal CSRS retired counterparts, non-USPS long-term, full-time FECA beneficiaries typically received higher benefits in 2010,” GAO wrote. “The median annual FECA benefit of $35,614 was about 26 percent higher than the median annual annuity received by retirees, which was $28,289, after adjusting for the effects of taxes.” GAO did not include the Postal Service in that portion of the analysis because USPS did not have work history data for the period GAO studied.

Labor organizations such as the National Treasury Employees Union oppose proposals that would cut FECA benefits for retirement-age recipients.

“Having lost the ability to continue earning a salary and retirement credits, these disabled federal workers would have their Workers’ Compensation benefits reduced just for becoming elderly,” **NTEU President Colleen Kelley** said in a press statement last month. “Entering such a time of life does not lessen their need for income, but in fact brings new challenges and expenses such as health care needs.”

Cuts Target Federal Workers; Unions Complain. Federal workers were $15 billion losers as Congress looked for ways to pay for parts of the just-passed legislation to extend the payroll tax cut and federal unemployment benefits through the end of the year.

Their advocates are crying foul, saying two consecutive years of seeing their pay frozen means the nation's 2 million civil servants already have contributed more than $60 billion to reducing government costs. Republicans, led by their aggressive freshman class, say federal employees, with their generally secure jobs and benefits, can do more. They have proposed several bills to make that happen.

The White House also is asking federal employees to pitch in more for their retirement plans.

Under the bill passed Friday, about half of the $30 billion cost of extending unemployment benefits will be made up by requiring newly hired federal workers to pay an additional 2.3 percent of their salaries for their pensions. Currently they pay 0.8 percent.

Combined with other bills House Republicans have proposed to further limit federal wages and benefits, the total cost to civil servants could be $134 billion over the next decade, said House Democratic Whip Steny Hoyer of Maryland.

"The ongoing efforts to target federal workers will substantially undermine our ability to recruit and retain the quality of people we need," said Hoyer, whose district encompassing some of the Washington suburbs is home to thousands of government employees.

Unions representing federal workers were equally upset.

"It is unreasonable to turn to this dedicated workforce yet again while shielding those who are not paying their share," said Colleen M. Kelley, president of the National Treasury Employees Union.

"I don't know how cutting our retirement puts anybody back to work," said John Gage, president of the American Federation of Government Employees. "What are we, an ATM machine?"

Republicans in December proposed an even more ambitious plan to pay for part of the payroll tax and jobless benefit bill by freezing government workers' pay a third consecutive year and reducing pension benefits in addition to raising their retirement plan contributions.

The Senate wouldn't go along, but in the more recent round of negotiations the House GOP again asked for all federal workers to pay more for their retirements. Democrats objected, and in the end they settled for higher contributions only from newly hired employees.

But that's not the end of it. Earlier this month, the House passed separate legislation, offered by freshman GOP Rep. Sean Duffy of Wisconsin, to keep the pay freeze in effect for a third year in 2013 and also deny members of Congress a salary hike. Democrats complained but, not wanting to be seen as supporting a pay raise for themselves, 72 voted for the bill and it passed 309-117.

The House is also considering a bill that would require federal workers and members of Congress to contribute a total of 1.5 percent more to their pensions over three years and readjust how annuities are calculated for new hires. That bill, estimated to save more than $40 billion, also eliminates a Social Security supplemental income program for those eligible to retire before age 62.

The NTEU, the largest independent union of federal workers, says the increased pension contribution would boost the annual payment for a worker earning $50,000 a year from $400 to $1,150.

In introducing the bill, freshman Rep. Dennis Ross, R-Fla., said people are "rightfully outraged by the pension benefits guaranteed to a bloated federal workforce."

Ross wants to see savings from his bill go to deficit reduction, but the current plan is to use it to help pay for a $260 billion bill to finance highway construction and transit programs over the next five years.

Freshman Rep. Martha Roby, R-Ala., has also introduced a bill to stop what she called a gimmick to dodge the pay freeze. Her bill would suspend through the end of this year within-grade step increases, wherein many employees can get raises of 2 percent or 3 percent every one to three years upon the recommendation of their bosses. These increases, not covered in the pay freeze, cost about $1 billion a year, Roby said.

While most of the action has been in the House, a group of Senate Republicans has proposed extending the federal tax freeze for two more years and reducing the size of the government workforce by 5 percent as one way to help avoid automatic Defense Department budget cuts passed by Congress last summer and due to take effect in 2013. All these proposals will face resistance in the Democratic-controlled Senate.

Republicans are not alone in trying to tap the federal workforce for savings. The White House, in its budget proposal for 2013, is calling for a 1.2 percent increase in federal employee contributions to their pension plans. That would reduce the government's share by $27 billion over the next decade.

But the White House also favors giving federal workers a 0.5 percent pay raise in 2013. "A permanent pay freeze is neither sustainable nor desirable," it said.

An AP-CNBC poll taken in November 2010 found that many agree that the federal workforce is too big and can be a source of savings. Some 62 percent said they favored reducing the number of federal workers as a means of shrinking the federal deficit, and 59 percent supported a federal wage freeze.

Republicans base many of their arguments on a recently published report by the Congressional Budget Office that found that the average federal worker earns about 2 percent more than a comparable private sector worker, and that, when pension and health benefits are factored in, federal compensation is 16 percent greater. Federal unions say the report overstates the advantages of federal workers.

The CBO reported wide variances depending on worker education levels. Federal civilian workers with no more than a high school education earned about 21 percent more, and their benefits were 72 percent higher, than their private-sector counterparts. But federal workers with a professional degree or doctorate earned about 23 percent less.

The government spends about $200 billion a year to compensate the 2.3 million federal civilian employees, including about $80 billion for civilian personnel working in the Defense Department.

The CBO noted that the size of the federal workforce has remained at about 2 million over the past 30 years, and that its share of the total U.S. workforce has declined, from 2.3 percent in 1980 to 1.7 percent in 2010.

Prohibited Personnel Practice of the Month

PROHIBITED PERSONNEL PRACTICE OF THE MONTH

Number 4
Obstructing the Right to Compete for Employment

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority — deceive or willfully obstruct any person with respect to such person's right to compete for employment.

Where is this prohibition covered in the law?

The fourth prohibited personnel practice (PPP) can be found at section 2302(b)(4) in title 5 of the United States Code.

What is the purpose of the fourth prohibited personnel practice?

The fourth PPP is designed to further the intent of The Pendleton Act of 1883 that an individual appointed to the civil service be the best-qualified applicant based on objective criteria. The intent of the Act should not be thwarted by the personal agenda of anyone with the authority to influence the Government's employment decisions. Thus, a person with the authority to take, direct others to take, recommend, or approve a personnel action may not intentionally discourage a person from applying for a Federal position or engage in deception or otherwise raise obstacles to the appointment of a qualified individual. Everyone should have a fair and equal opportunity to secure Federal employment for which they are qualified.

What exactly is prohibited?

The fourth PPP prohibits any person with the authority to take or influence a personnel action from intentionally taking an action or deceiving someone else in an effort to prevent or obstruct an applicant's right to a fair and open competition for employment. Examples of the type of actions that are prohibited may be gleaned from cases in which the fourth PPP is addressed by the U.S. Merit Systems Protection Board (MSPB). In *Special Counsel v. Ross*, 34 M.S.P.R. 197 (1987), the Office of Special Counsel (OSC) brought an action before MSPB, alleging that two respondents, employees in an agency's personnel office, engaged in conduct designed to eliminate certain qualified candidates from competition in order to employ a person of their choice who was less qualified for the position. The MSPB found that the respondents: (1) tailored a position description for the position so that their preferred candidate could qualify for the position; (2) intentionally failed to mail inquiries to four qualified candidates concerning their availability for the position; and (3) falsely reported to the Office of Personnel Management the status of certain candidates.

Another complaint brought by OSC was explained in *Special Counsel v. Hoban*, 24 M.S.P.R. 154 (1984). In that case, MSPB found a violation of § 2302(b)(4), when the respondent (1) gave an employee an undeserved lowered performance rating in order to make him a less desirable candidate for a new position; and (2) falsely reported that he had not interviewed another candidate before making a selection while misrepresenting that the candidate refused to return his calls, as a reason for not selecting the candidate.

What is the MSPB's jurisdiction to review an alleged violation of § 2302(b)(4)?

As mentioned in the discussion of the third PPP, under 5 U.S.C. § 7701, MSPB may not sustain a personnel action "based on" a PPP. A PPP may be raised as an affirmative defense in an appeal of an otherwise appealable action. An otherwise appealable action is a personnel action which is subject to the MSPB's jurisdiction under a law, rule, or regulation. For example, a removal, suspension of 15 days or more, and a reduction in grade or pay are personnel actions that are directly appealable to MSPB. The MSPB will review an allegation of a violation of § 2302(b)(4) only if it is related to the personnel action being appealed. *See Finston v. Health Care Financing Administration*, 83 M.S.P.R. 100 ¶ 10 (1999) (the Board has no jurisdiction to review an alleged (b)(4) violation absent an action that is otherwise appealable to the Board). A § 2302(b)(4) claim may not be raised in connection with an appeal filed under the Veterans Employment Opportunities Act of 1998 (violation of veterans' preference rights); the Uniformed Services Employment and Reemployment Rights Act of 1994 (discrimination on the basis of military service); or the Whistleblower Protection Act (individual right of action appeals concerning retaliation for making protected disclosures) because such appeals are not filed under MSPB's otherwise appealable action authority, but rather specific subject-matter statutory authorities.

If the violation is not related to an otherwise appealable action, an individual may file a complaint with OSC, which is a separate, independent executive agency. The OSC has the authority to investigate alleged violations of §2302(b)(4) and seek corrective action before MSPB. The instructions for filing a complaint with OSC may be found at its website: www.osc.gov.

What type of penalty is imposed when a § 2302(b)(4) violation is found by MSPB?

Pursuant to 5 U.S.C. § 1215(a)(3), MSPB has authority to impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed $1,000. In *Special Counsel v. Hoban*, MSPB adopted the method for selecting penalties in adverse action cases as described in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981). The MSPB will consider those factors that are relevant in an individual case, such as the nature and seriousness of the offense, the employee's job level; past disciplinary record; length of service; potential for rehabilitation; mitigating factors; and the adequacy of alternative sanctions.
In *Special Counsel v. Ross*, the selected penalty for the two respondents was a reduction in grade for a period of no less than one year. In *Hoban*, the penalty imposed was also a reduction in grade.

Management-Employee Relations

Telework Failures. A major hurdle for federal agencies implementing a 2010 telework law is simply determining which roles and jobs can be completed while working remotely, according to a recent survey by the Congressional Research Service.

The survey -- requested by Reps. Gerry Connolly, D-Va., and John Sarbanes, D-Md. -- found that even as some agencies have a high percentage of desk jobs, many have a fairly prohibitive telework eligibility and low rates of telework participation.

The Veterans Affairs Department, for example, has classified 87.5 percent of employees as ineligible to telework and failed to provide CRS any detailed information to justify having such high rates of ineligibility. The Homeland Security Department also has classified 70 percent of employees as ineligible for remote work, with an average of just 0.016 percent of employees teleworking during the average pay period, CRS found.

"This abysmal telework performance is inexplicable in light of the large number of DHS office positions and could prove to be a threat to national security if DHS is unable to implement a continuity of operations plan because its employees are unaccustomed to telework," Connolly and Sarbanes stated in a letter to OPM Director John Berry.

Under the 2010 Telework Enhancement Act, agencies were required to establish a policy on working outside the office, identify eligible employees and inform them of the option. The law also required agencies to name an official to manage telework programs, and incorporate the policy into plans for continuing essential services during natural disasters or other emergencies.

Meanwhile, other agencies, such as the health and Human Services and Education departments, have classified a high percentage of employees as eligible to telework, but only a small percentage of total work hours are completed remotely, CRS noted. "This suggests that while some agencies are doing good work to improve eligibility, many also need to ensure that telework is routine," the letter states.

Still, some agencies stood out as leaders on federal telework, most notably the Agriculture Department, the Patent and Trademark Office and the General Services Administration, CRS found. USDA has high telework participation, despite the fact that many employees spend a lot of time in the field, and PTO employees completed 40 percent of all work hours under a telework arrangement, the survey found.

Agencies also reported difficulty in quantifying energy and real estate cost savings from telework, and CRS recommended looking to agencies like PTO and GSA for methods of quantifying cost savings. "Considering that PTO has saved $4.36 million in real estate costs by avoiding construction of individual offices for 3,464 employees, savings governmentwide could be substantial and should be quantified," the letter states.

The Transportation, Justice and Housing and Urban Development departments did not respond to CRS's survey.

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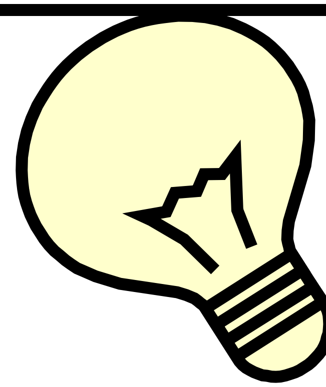


On a Brighter Note: Telework Week

Next month marks Telework Exchange's annual Telework Week event, and many agencies are planning to use the event to test their business continuity plans.

Cindy Auten, general manager of Telework Exchange, told Wired Workplace that more than 9,000 federal employees have pledged to telework during the annual Telework Week, which runs March 5-9.

"I think that this will be a good test for agencies to see how prepared they are without having the next Snowmageddon," Auten said.

Last year, the Telework Week program had nearly 40,000 pledges, with more than 86 percent of those pledges coming from federal workers. Those workers collectively saved $2.7 million in commuting costs and saved employees an average two hours from their commutes for each day teleworked, according to Telework Exchange estimates.

The Hidden Cost of Harassment. When a high-profile harassment case disrupts the workplace it often leads managers and executives to revisit their personnel management standards and practices to ensure they have a good defense against litigation. But by focusing only on legal liability, managers are ignoring the larger problem: an office culture that enables discrimination. Most cases stop short of the courts or simply go unreported; still the hidden costs are high.

In the federal government, only 3 percent of harassment charges lead to administrative findings of discrimination, about one-third are settled, and the remainder are withdrawn or dismissed. Regardless of the outcome, settlements and investigations cost employers a great deal of money. While agencies scour their budgets, processes and business structure to eliminate waste and inefficiency, rarely do they look for these often significant and easily remedied costs.

When managers narrow their focus to whether or not workplace conduct is legal, it blinds them to the operational toll of behavior that technically might be legal, but is imprudent, unnecessary and avoidable.

Unreported allegations can cost employers a great deal. A female employee at the Library of Congress, for instance, filed suit against her employer alleging that she and several other female employees had been subjected to 20 years of inappropriate conduct, including stares, touches and sexual innuendo. The case was settled in 2010, and the employee received a $250,000 payment. Even if she had never come forward, the settlement pales in comparison to the setbacks associated with two decades of unhappy and unproductive employees.

These situations sap productivity because they have a direct impact on how people approach their job. The costs are significant, not only in terms of investigating, defending and resolving allegations, but also in defusing charged situations that could have been avoided. There also are pernicious hidden damages when individuals say nothing but remain distracted.

More often than not, harassment and discrimination claims, baseless or otherwise, are a product of the workplace environment. Executives should view the letter of the law only as the foundation for their human resources standards and practices. They need to build a strong, values-driven ethos on top of that foundation. It’s more than just communicating a list of rules and regulations or a mission statement to managers and workers; it’s instilling a culture of civility, inclusion and professionalism.

There are three simple, immediate steps managers can take to foster a civil workplace:

Lead by example. If a supervisor is rude or demeans an employee, then he cannot expect his employees to behave any differently. Of all that goes on in the workplace, a manager’s attitude will have the single greatest impact on his employees’ efforts.

Open the door. Managers must be receptive to complaints, and react to conflicts or concerns in a thoughtful and decisive manner. It’s rare that employees call a lawyer the first time they feel harassed or discriminated against; make sure every worker knows there is an effective avenue to deal with such issues before they boil over.

Transcend the check-the-box mentality. Workplace training must influence behavior, not just communicate concepts -- it must go beyond simply meeting a minimum legal standard and moving onto the next topic. For training to be effective, it must be simple and concise, yet speak to the audience both intellectually and emotionally. A lecture explaining the history of the most important cases associated with sexual harassment law, for example, might meet the legal standard for relevant workplace training, but such lessons are tedious and forgettable. In stark contrast, a straightforward account of real-life inappropriate workplace behavior, coupled with an open dialogue about the likely consequences of such actions, will keep an audience engaged, and ensure they do not soon forget what they’ve learned.

Whether dealing with a workforce of 10 or 10,000, every manager should ensure, instill and display a culture of compliance and professionalism in the workplace. It’s not just the right thing to do, it happens to be cost-effective as well.

No Bias Found in Non-Selection. In Culpepper v. Department of Agriculture, No. 10-2627 (8th Cir., December 28, 2011), a U.S. Court of Appeals struck down a federal employee's argument that she was not selected for a job, for which she did not apply, because of discrimination. The employee argued that she did not apply for the job because doing so would have been futile. In rejecting the employee's argument, the court clarified the standard for showing futility in a non-selection case where the aggrieved did not apply for the position in question.

Devonna Culpepper worked as a loan technician for the Department of Agriculture. From her early childhood, Culpepper suffered from a severe hearing impairment, which qualified her for protection from disability discrimination.

In May 2006, Culpepper sent a letter to USDA's office of civil rights alleging discrimination and retaliation in a vacancy announcement for a loan specialist position for which she did not apply. Culpepper claimed the vacancy announcement was discriminatory because it required that the incumbent have "experience in listening."

After USDA failed to respond to her letter, Culpepper took her allegation of discrimination to a U.S. District Court. That court rejected Culpepper's discrimination argument and Culpepper appealed to the 8th Circuit. The court of appeals upheld the district court's decision. It found that although an employee normally must show that she applied for a position and was rejected in order to show discriminatory non-selection, failure to apply for the position may be excused if the discrimination she is alleging would have made application for the position futile and if she can show that absent the discrimination, she would have applied for the position.

The circuit court found that evidence showed that Culpepper did not apply for the loan specialist position because at the time of the vacancy announcement, her father had recently died. The court concluded that Culpepper had not shown a link between her failure to apply for the position and the allegedly discriminatory "experience listening" language in the vacancy announcement. The court therefore did not decide whether the "experience listening" language was discriminatory.

The circuit court also rejected Culpepper's argument that she should have been promoted non-competitively through accretion of duties. She argued that her supervisors had initiated the accretion of duties promotion process for her non-disabled coworkers by requesting desk audits for them, but not for her. The court of appeals found Culpepper could not bring a valid claim of discriminatory failure to grant her an accretion of duties promotion, not only because she did not apply for such a promotion, but she never requested a desk audit herself, never asked her supervisors to request one on her behalf, and never complained that she was performing duties above her grade level. The court held that an employee who does not formally apply for a promotion must make it clear to her superiors that she is interested in the promotion before she can successfully bring a claim of discrimination.

The decision in this case illustrates the importance of actually applying for positions, even if one believes that the application will be futile because of discrimination; although possible, proving discriminatory non-selection is much more complicated and difficult where an employee has failed to apply.

* This information is provided by the attorneys at Passman & Kaplan, P.C., a law firm dedicated to the representation of federal employees worldwide.

Training, Self-Development, and Personal Improvement

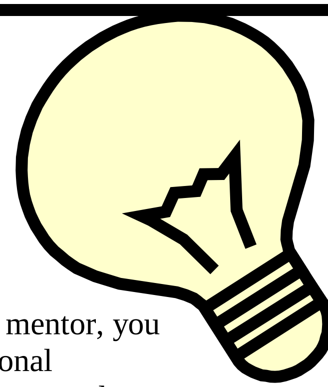
<u>What Makes a Good Mentor</u>. Mentors often provide valuable insights and institutional knowledge about an organization to a younger workforce. By working with a mentor, new employees are given new perspectives on organizational issues and are provided the opportunity to grow professionally and learn from their mentors' experiences.

What makes a good mentor? At all the places I have worked, the mentor-mentee relationship has been mainly informal. This structure has its benefits, along with some challenges. It’s more of a personal preference than anything. Some people prefer a formal structure, while others, such as myself, would prefer a more organic process of finding your mentor.

There are also countless examples of fantastic mentoring programs in which people opt into a mentorship agreement from specific agency activities like the Department of Homeland Security leadership program to outside leadership initiatives like the Graduate School Aspiring Leaders - these programs are largely successful because those opting in are passionate about taking a mentee, and those seeking a mentor are equally as motivated. We have had enormous success with our mentorship program here at GovLoop.

Whether you are opting in or in an informal mentor relationship, here are the qualities that I look for in a mentor:

Provide Constructive Feedback (positive & negative) Supportive of my projects/work Makes Time for Me Pays close attention to my professional development Creates new opportunities in career Allows me to make connections/build network professionally Knows my strengths and weaknesses, sets me up for success Leads by example High level knowledge on organization and field they work in Connect on a personal level



Developing a mentor-mentee relationship has many benefits. By becoming a mentor, you help employees advance their career and allow them to tap into your institutional knowledge, as a mentee you are given a unique chance to learn from experiences and incorporate them into your own professional development.

With retirements up 24% last year and a rise of buyouts on the way, it's more important than ever that we leverage those years of learning (from how to navigate the politics, tips on getting ahead, and actually get things done in government) and help pass the torch to the next generation of leaders.

Do Women Feel Less Empowered in Your Federal Agency? This article is written by Tom Fox. Any references to "I", "me", or "my" refer to him as an author.

Do men and women working for the federal government have different perceptions of their jobs and work environments?

This is one of the questions that my organization, the Partnership for Public Service, set out to answer in Gender Gaps and Racial/Ethnic Divides , a new *Best Places to Work in the Federal Government* analysis, based on data from the Office of Personnel Management's 2011 Federal Employee Viewpoint Survey.

The analysis found that women, who comprise about 44 percent of the federal workforce, offered more positive views about their jobs and workplaces than men did. This government-wide view represents a shift from 2010, when the workplace satisfaction score for men was higher. But on specific issues of fairness and empowerment in the workplace, men were still more satisfied than women.

As always, government-wide scores tell one story, but the agency-specific information may offer another perspective. I encourage federal managers to take a look at the analysis and federal survey data to see how your agency stacks up and, if needed, to take action to improve the work environment. Here is some advice to help get you started:

Diagnose the problem. A good employee survey will not give you all the answers, but it will help you to know what questions to ask. So, in looking at the data underlying the current *Best Places* rankings and comparing responses by gender, race and national origin, the first step is to identify any major discrepancies. For example, does it show in your agency that male employees are significantly more likely to report that they feel empowered in the workplace and involved in decision-making than women report they are? If yes, look further. Is this difference in perceptions widespread in the organization or is it isolated in particular subcomponents?

Talk to employees and ask for their help interpreting the results. Is there reason to believe that it reflects reality? Is there data outside of the survey that might lend support to the possibility that there is a problem that needs to be addressed? For example, are your agency's turnover rates higher for women than men, or are more formal complaints being filed by one group or the other?

Develop hypotheses. Once you have determined that there is a problem, try to determine what may be causing it. In research terms, you should develop one or more hypotheses and then test each to see if a potential cause could be real. For example, one might assume that women are concentrated in lower grade levels than men and, thus, are less involved in decision-making.

That's a hypothesis that — in part at least — is fairly easy to examine. Are there proportionally more women at lower grade levels compared to men? If yes, take a look at your survey data to see if women at higher grades differ in their perceptions from women in lower grades. If they are no major differences among women based on their level in the organization, perhaps something else is at play. Might the differences be driven by differences in the occupations held? Might one or two senior managers be disproportionately involved? Are resources divided unequally?

Act on what you've discovered. There may not be any easy answers for addressing the problems you have uncovered, but there may be some "low-hanging fruit" in terms of actions that can be taken. You don't have to do everything on your own. Delegate and assign accountability focused on results. There may be a number of paths that can take you to the same objective. If possible, let subordinate managers or employees determine which path might work best for them or for the organization.

Be transparent and follow through. Let employees know what you plan to do. Then do it, and be sure employees know that it's been done. Maybe it's a change in policy. Perhaps it's a new system to proactively gather employee ideas. Ask for feedback and be persistent. Change takes time and not everything works as intended. Be ready to adapt as needed.

Have you as a manager dealt with issues of gender inequality in the federal workplace or as an employee felt less empowered and a sense of unfairness based on your gender?

Civilian Education System (CES) Courses Available. The Civilian Education System (CES), launched in November 2006, is a progressive, sequential, leader development program that provides enhanced leader development and education opportunities for Army civilians throughout their careers. Enrollment in the CES is mandatory for all supervisors/managers who have not completed the appropriate courses at each stage of their civilian career or have not received appropriate course/experience substitution. The CES includes five courses - the Foundation Course (FC), Basic Course (BC), Intermediate Course (IC), Advanced Course (AC), and the Continuing Education for Senior Leaders Course (CESL), all of which culminate with attendance at a Senior Service College (SSC) and the Defense Leader Development Program (DLAMP).

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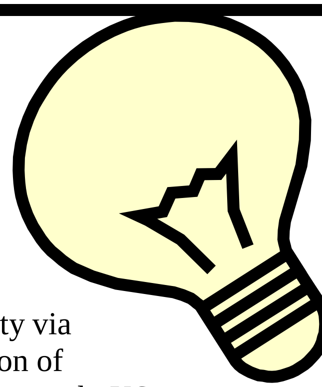

With the exception of the Foundation Course which is completed in its entirety via distributed learning, the remaining courses are accomplished via a combination of distributed learning and classroom training at Fort Belvoir, VA or Fort Leavenworth, KS.

Also available under the auspices of CES are the Action Officer Development Course (AODC), Supervisory Development Course (SDC), and Management Development Course (MDC), all available on-line as correspondence courses.

For an up-to-date course schedule, please click the link immediately below:

http://www.amsc.belvoir.army.mil/registrar/schedule/ces.jsp

For additional information on the CES, please click on the link below, contact your servicing HR Specialist, or refer to Tips and Tidbits 3-2007.

http://www.amsc.belvoir.army.mil/ces/
http://www.train.army.mil.   Click on the [Login] button upper right and key in your AKO

Employment Briefings for Military Spouses. Members of the Fort Benning CPAC staff conduct regular briefings for military spouses to outline the benefits of Executive Order (EO) 13473. Executive Order 13473 became effective September 11, 2009 and it is intended to provide military spouses an opportunity to obtain employment with the Federal government. The briefings detail spouse preference and eligibility; outline how to apply; confirm which documents should be submitted; and, provide general tips on resume completion. The briefings are conducted the third Wednesday in the month from 1000-1130 April through October, December, and February. Briefing locations vary and are disseminated through various media sources.

Anyone seeking additional information or interested in attending should contact Deb Quick, 706 545-3517.

RPA and ART Workshop. The Fort Benning CPAC HR specialists are available to conduct RPA and ART desk-side walkthroughs and/or workshops to assist HR liaisons, managers/supervisors, and new DCPDS account holders with accessing and using DCPDS, ART, initiating RPAs, forwarding and tracking RPAs, generating reports and printing SF 50s. Training can be accomplished via individualized sessions or activity specific workshops upon request. If you desire training of this nature, please contact your servicing HR specialist to arrange for scheduling.

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Job Aids Available on the Web. Lotus ScreenCams (how-to-movies) are available to assist DCPDS users with DCPDS, Army Regional Tools (ART), Oracle 11i and other automation tools. ScreenCam movies ART Logon, Ghostview, Gatekeeper, Inbox Default, Initiating an RPA, Logging On, Navigator, RPA Overview and RPA Routing are available on the web at: http://www.chra.army.mil/. Click on HR Toolkit and then click on the name of the movie to download or play it. Managers/supervisors and administrative personnel responsible for initiating RPAs are encouraged to review this site and check out these new tools. ART Users Guide has been updated and provides descriptions of and instructions for using tools available in ART, including such tools as Employee Data, Inbox Statistics (timeliness and status information about personnel actions), Organization Structure (information about positions in various organizational elements), and many more tools. It is intended for use by managers, resource management officials, administrative officers, and commanders as well as CPAC and CPOC staff members. There is both an on-line and downloadable Word version (suitable for printing).

In addition, to the ART Users Guide, there is a Defense Civilian Personnel Data System (DCPDS) Desk Guide which provides how-to information about tasks and functions that end users might need to perform in DCPDS, such as initiating a Request for Personnel Action (RPA) and creating a Gatekeeper Checklist. The ART Users Guide and the Desk Guide can be accessed from the CHRA web page at: http://www.chra.army.mil/, by clicking on HR Toolkit. In addition to these tools the Fort Benning CPAC staff is available to assist you in accessing DCPDS, ART; initiating RPAs; creating a Gatekeeper Checklist; forwarding and tracking RPAs; and, generating reports and printing a Notification of Personnel Action (i.e. SF 50). If you have any questions or need assistance, please contact your servicing HR specialist to arrange a time so we can come to your office to help you.

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