

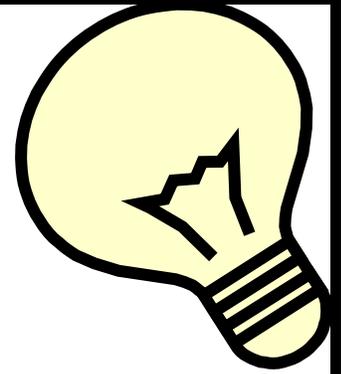
The

Illuminator

Shedding Light on the HR World

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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, the Maneuver Center of Excellence (MCOE) civilian transition, etc.).

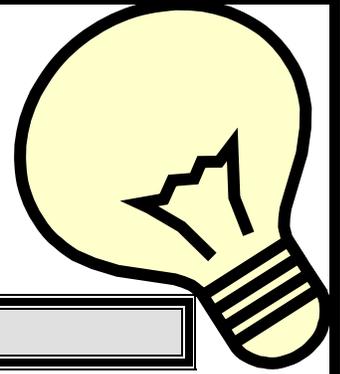
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Retirement, Life/Health Insurance, TSP, Social Security and Such

Study: Older Americans Expect to Work Longer; Many Expect to Never Retire.

As older Americans (aged 50+) in the workforce continue to progress towards retirement, the recent recession has left many of them expecting to work longer or even to never retire according to data from the [Employee Benefit Research Institute \(EBRI\)](#).

The EBRI analysis found that just before the recession in 2006, 11.2 percent of workers age 50 or over expected to retire at age 70, but by 2010 (after it had officially ended) that had increased to 14.8 percent. Even at higher ages, the expected retirement age has jumped: Just 1.7 percent of workers age 50 or over planned to retire at age 80 in 2006, while that more than tripled to 5.2 percent in 2010.

Data also showed that expected retirement at earlier ages (62 and 65) steadily declined over the four year period from 2006-2010.

The study also showed that many workers said they never plan to retire. In 2008, 22.4 percent of workers age 50 or older said they had no plans to do so. That number did decline to 16.3 percent by 2010, however.

“The general trend shows that older Americans are expecting to retire later,” said Sudipto Banerjee, EBRI research associate and author of the study. “But the most striking finding is that nearly 20 percent of the sample expects never to stop working and more than 15 percent of the sample don’t know when they are going to retire.”

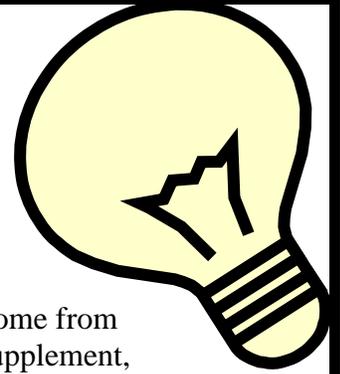
The full results are published on the [EBRI Web site](#).

A Common Misconception about the FERS Annuity Supplement. The FERS annuity supplement is commonly believed to be linked to the Social Security Administration (SSA), even to the point where some believe the benefit is actually administered by SSA rather than the Office of Personnel Management (OPM). This seems to be plausible, because the supplement is a quasi-Social Security payment prior to the start of the actual Social Security benefit at age 62. Another reason some think this is true is it would account for the months of delay until the supplement finally starts – OPM is waiting to hear from Social Security, right?

The truth is that OPM calculates the supplement independently, without using any data from Social Security. The SSA earnings figures are not the same as FERS earnings per se. There are three reasons for this:

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1. Social Security counts income earned before age 22 and it counts income from non-Government sources. Neither is included in computation of the supplement, and both are commingled by SSA with federal pay so they cannot be distinguished from each other.
2. Social Security does not count income unless it is earned. In contrast to this, the calculation of the supplement does, in fact, count non-earned income. This is called “deeming.”
3. The Social Security annual statement projects what might be the age-62 benefit, if the future is like the past, while the calculation of the supplement uses figures from the past, only, to arrive at a current benefit.

The above means the Social Security data cannot be used in calculating the FERS annuity supplement. The data is not really satisfactory even for making a credible estimate.

The interim payment to new retirees includes a percentage of whatever the annuity is going to be, but \$0.0 for the annuity supplement. Retirees must wait for months before they start receiving anything at all for the supplement. This is despite the fact that the same documentation establishing title to the annuity also establishes title to the annuity supplement. And the information needed regarding service time and salaries is also available at the outset for both benefits, but is used only for the annuity and not for the supplement.

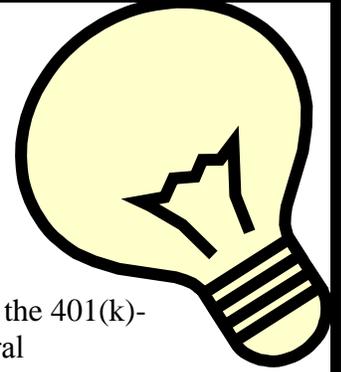
Why do they withhold the retiree’s money in this way? How much money is involved? The money involved in most cases is from \$700 to \$1,100 monthly; thus, if OPM does not start paying the supplement until, say, six months after retirement, the shortfall for one retiree is from \$4,200 to \$6,600.

Why does OPM do this? Well, one of the reasons offered is that the supplement calculation is quite complex and lengthy, and they want to start paying something as soon as possible. Well, this logic glosses over the simple fact that the interim payment is an estimate, for crying out loud! An estimate, by definition, is not precise – that is why they call it an estimate! OPM could easily pay, say, 60-70% of what the supplement is going to be, just as they are already doing with the annuity itself.

As for the “complex and lengthy” argument, why on earth doesn’t OPM get software for this data-intense task? They do not hesitate to ask for money for hiring 40 extra employees – why don’t they get the software instead? (By the way, we should all be thankful congress refused the latest OPM request for additional staff.)

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TSP Participation Declining. The rate of federal employee participation in the 401(k)-like Thrift Savings Plan is “softening,” according to new data from the Federal Retirement Thrift Investment Board.

TSP participation was at 85.4 percent in October, before showing a slight dip to 85.2 in November. The decline marked a “trend that appears to be continuing,” said Renee Wilder, the board’s director of research and strategic planning.

Participation by military members remained steady at 39.3 percent. Military reserves’ participation was 15.7 percent in November, up from 14.5 percent in October, according to the new data.

Wilder said the board found three factors contributing to the “softening” of participation: employees hitting their contribution limits toward the calendar year’s end; separations from service in the federal government, such as reductions as a result of troop withdrawals; and an uptick in “hardship withdrawals.”

“Expect to see more and more separation — either retiring or leaving — particularly with the current budget status,” said Pamela-Jeanne Moran, the board’s director of participant services. The shrinking population of Civil Service Retirement System employees is also a factor, she said.

She added, however, that many people retire in January, and “with the hiring freeze included, if we replaced the people who are leaving, they’d be automatically enrolled [in TSP].”

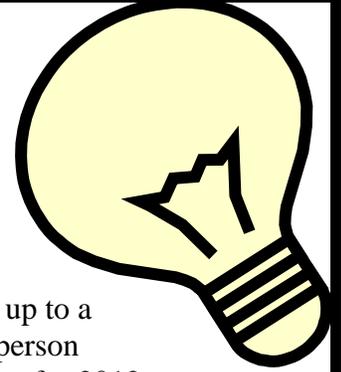
As previously reported, November [was a disappointing](#) month for TSP funds. The L Income, G and F funds posted positive returns, but the C, S and I funds all posted losses between October and November

A Few Good Things. It is easy to focus on the bad news coming through the pipeline these days, such as proposed cuts to federal employee benefits and pension processing delays at the Office of Personnel Management. Still, 2011 wasn't all bad, was it? And there are some things to look forward to in 2012.

Payroll Taxes. Congress may be tied up in knots this week debating a payroll tax cut for 2012, but throughout 2011, the FICA tax was cut by 2 percent, giving many federal employees more money in their paychecks despite the ongoing pay freeze. The FICA tax was slated to be applied to the first \$106,800 of wages in 2011 at a rate of 6.2 percent. Instead, the employee share was reduced to 4.2 percent. For the 85 percent of the federal

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workforce covered by the Federal Employees Retirement System, this added up to a savings of between \$1,000 (for a \$50,000 salary) to more than \$2,100 (for a person earning the maximum taxable wage of \$106,800). The maximum taxable wage for 2012 will increase to \$110,100, so high-wage earners will pay either the 4.2 percent or the 6.2 percent on an additional \$3,300 next year.

Widows and Widowers. The Thrift Savings Plan has implemented spousal accounts for widows and widowers of TSP participants. These accounts allow the balance of a TSP account to remain in the plan under the spouse's name. This benefit was made available under the 2009 TSP Enhancement Act and launched officially at the end of 2010. Here's [more information](#).

Roth Option. In other TSP news, much work has been going on behind the scenes on implementation of the Roth TSP option, which will be unveiled in the second quarter of 2012. Unlike traditional TSP contributions, Roth contributions and the earnings associated with them are tax-free when withdrawn. The TSP has had to revise virtually every publication and form in its repertoire due to this new investment option. And every federal payroll office has been working to revise its payroll systems to accept after-tax dollars into the Roth TSP accounts. More information will be coming in your TSP participant statement toward the end of February.

Processing Progress. You may not have seen the results yet, but OPM has been trying to address the retirement processing fiasco, partly by hiring additional help to process new claims. OPM also is working with agencies to provide additional training for retirement specialists to review retirement applications prior to submission to OPM to avoid unnecessary delays caused by common errors. And it has adopted a policy of accepting agency estimates on benefits to provide new retirees an interim payment that is closer to 90 percent of their expected annuity.

Long-Term Care. In 2011, the Federal Long-Term Care Insurance Program held its first open season for new applicants since the original open season was held in 2002. That provided an opportunity to enroll in the program with an abbreviated underwriting application -- fewer questions regarding your health. There was a 20 percent increase in enrollment, bringing the total to more than 270,000 policies.

Lower Life Insurance Premiums. Many people covered under the Federal Employees Group Life Insurance program will get some good news next year in the form of lower premiums. Here's a link to all [2012 FEGLI rates](#).

COLA Relief. Most federal retirees will receive a cost-of-living adjustment for the first time in two years in 2012. I recently [wrote about the upcoming COLA](#).

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Premium Pressure. Premiums under the Federal Employees Health Benefits Program are going up an average of only 3.8 percent in 2012, compared to an expected [increase of 5.8 percent](#) for all employee health care plans nationwide.

Staving Off Cuts. So far, Congress has held off on making cuts to federal retirement benefits -- other than the pay freeze, which indirectly affects retirement computations, FEGLI insurance values and TSP contributions. And despite disasters ranging from earthquakes to hurricanes, Washington is still standing and federal employees are ready to face another year.

Are Federal Buyout Incentives Worth Taking? More than a few employees in and outside government dream of being paid to leave their jobs. In an ideal world, workers would take the money and run, as the Steve Miller Band advised in the 1976 song, to another job or to a well-deserved retirement. But this is not an ideal world, and when it comes to buyouts, federal employees might be better served to heed the wisdom in another 1970s song, The Gambler: "You've got to know when to hold 'em, know when to fold 'em."

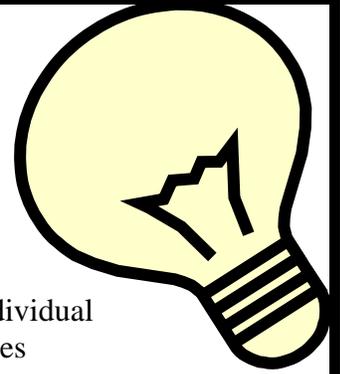
The reality is, for most people, \$25,000 just doesn't stretch as far as it once did. That's the maximum amount of cash -- before taxes -- available to eligible federal employees in buyouts, or voluntary separation incentive payments, as they are known in government jargon. After taxes, the amount shrinks to about \$16,000 or \$17,000, according to Arthur Stein, a certified financial planner with SPC Financial in Rockville, Md., who counts many federal employees among his clients.

For workers who are not planning an imminent retirement already and for those enrolled in the Federal Employees Retirement System -- which is the bulk of the government workforce -- taking a buyout can mean losing more money over time. "I don't think it's much of an incentive," says Stein. "The key question is can you afford to take a buyout?" Stein says FERS employees who accept a buyout risk reduced Social Security benefits and losing the employer match in the Thrift Savings Plan, the government's 401(k)-style program. On the other hand, buyouts can be strong incentives for those planning to retire in any event, or for those employees covered under the Civil Service Retirement System. CSRS participants receive up to 80 percent of their annuity but are not eligible for Social Security or TSP benefits.

The federal buyout of \$25,000, however, is "just not a lot of money," Stein says. Employees in the private sector who accept buyouts often can receive up to one year's salary. The 2002 Homeland Security Act allowed non-Defense agencies to seek buyout authority from the Office of Personnel Management when appropriate to manage the workforce, capping the pay out at \$25,000. Congress is unlikely to increase that figure in the middle of a federal pay freeze and fights over government spending.

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While the benefit of a buyout from an employee's perspective depends on individual circumstances, the advantages to agencies are clear. In recent months, agencies increasingly have turned to buyouts and early retirement packages as a way to save money and to avoid potential layoffs or furloughs in the face of impending budget cuts over the next decade. Agencies can combine the cash incentives with early-out options, which provide an early retirement with a reduced pension to eligible employees who are 50 or older and have 20 years of service, or those who have 25 years of service at any age. It's a more attractive option for agencies looking to downsize or reshape their workforce. It's also cheaper: Laying off employees still costs money because those workers are entitled to severance pay.

The appeal of buyouts to agencies has grown after the failure of the joint select committee on deficit reduction to agree on a plan to reduce spending by \$1.2 trillion triggered across-the-board automatic spending cuts. Those cuts are slated to take effect in January 2013 unless Congress repeals sequestration. While there are no official figures available yet on how many employees accepted such incentives in 2011, tens of thousands were offered, and agencies en masse are sure to offer another round of buyouts heading into fiscal 2013.

In November, OPM Director John Berry sent a memo to agency human resources chiefs addressing the tools available to restructure the federal workforce, including buyouts, early outs, layoffs and reassignments. "The federal government is experiencing restructuring and downsizing in an increasing number of agencies," the memo stated. "As a result, some federal employees may ultimately find themselves in a position of having to transition to a new job."

The last time the government relied heavily on buyouts and early outs to reshape the federal workforce was during the 1990s as part of the Clinton administration's reinventing government initiative. The difference between then and now, however, is that agencies' use of the incentive in the 1990s was not budget-driven, but part of an overall initiative aimed at making government more efficient and streamlined. "In the 1990s, people felt they could leave the federal government and get a job," Stein says.

John Palguta, vice president for policy at the nonprofit Partnership for Public Service, says that while buyouts still are an effective incentive for "a decent number of employees," they are not as effective as they were during the Clinton years. Palguta and Stein say buyouts can be a good deal for federal employees who are eligible for retirement or have only a few years of service and not much invested in their pensions and TSP accounts.

Workers should weigh their options carefully when considering a buyout, observers say. "Federal employees still have very good benefits compared to most private sector

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employees, and they have better job security than your average private sector employee," says John Grobe, president of Federal Career Experts, an Illinois-based consulting firm.

Grobe spent more than two decades working at the Internal Revenue Service and took a buyout in 1997. "Anyone considering a buyout or leaving in general should sit back and focus on where they want to go, not where they want to be from," he says. "The decisions we make should be forward-looking."

Employment-Related News

Why Federal Experts Command - and Deserve - High Salaries. This article was written by Howard Risher, a consultant and writer on federal pay and performance issues. He was the managing consultant for the studies leading to the 1990 Federal Employees Pay Comparability Act and is author of "Planning Wage and Salary Programs." Any references to "I" pertain to him as an author.

The list of the 1,000 highest-paid federal employees released last month by Wikiorgcharts.com must have raised eyebrows. In a country where the average full-time employee earns less than \$40,000, salaries ranging from \$216,000 to \$350,000 appear very high. However, the 1,000 feds profiled earn less than the \$380,000 that would place them in the top 1 percent of the nation's income earners. And within the federal workforce of roughly 2.1 million, the individuals on the list account for an extremely small percentage.

Perhaps more important, the list is a reminder that agencies need to compete in a world where top talent is paid well. Government employs world-class specialists in many areas. With few exceptions, the individuals on the list could quickly find jobs paying as much or more than their federal salaries.

By Wall Street standards, the federal salaries are "walking-around money." I recall when I managed a compensation consulting practice in Manhattan 30 years ago, one firm paid many employees a nominal salary of \$99,000 that was intended to cover their living expenses until their far larger bonuses were paid at year end. Wall Street pay levels may be down, but federal salaries are far below the levels for senior specialists in the financial community.

A National Institutes of Health physician earns the top salary on the list of highest-paid feds. He and his NIH colleagues account for 49 of the 100 highest-paid feds. They are among the best in their specialties, but their pay is close to the averages. The data on Washingtonian magazine's website show the average cardiologist in the Eastern U.S., for example, earned \$345,082.

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I also recall there was concern about NIH salaries in the 1980s. Researchers were leaving for university research centers where they were paid higher salaries. The kicker is that then they were paid from NIH grants that also funded staff salaries, the purchase of costly research equipment and, in some cases, new buildings to house the research. The bottom line was that the reluctance to pay market salaries cost government millions. Hopefully that does not happen again.

Congress over the years has recognized the need to employ top talent by exempting a number of agencies from Title 5. Title 42 and Title 38 authorize agencies to pay market rates for certain medical specialists. Similarly, when the 1989 Financial Institutions Reform, Recovery and Enforcement Act was enacted, Congress recognized that — to be able to regulate the banking and financial services industry — agencies had to be able to hire people with needed expertise.

The General Schedule may well overpay some employees — no one seems willing to develop the facts — but salaries in some fields are known to be below market levels. For the most part, those are "knowledge" occupations where government competes with industry for talent.

Those individuals can — and many undoubtedly will — move to the private sector if their government prospects decline further. In some cases they will switch to a contractor and continue to perform the same work — and cost more. One widely respected human resources executive estimates contract personnel cost government 50 percent more.

The cost is more than money. The loss of expertise can set back projects for months. Those projects in some cases will save lives. Proposals to add another year to the current two-year pay freeze would affect retention and recruiting for years. As the economy improves, the most talented will have attractive opportunities.

No company would adopt a blanket three-year pay freeze for its top talent. Company leaders would know the consequences for staffing would be disastrous.

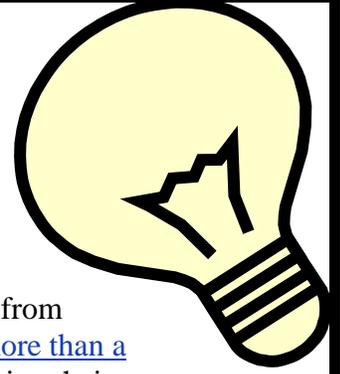
Howard Risher is a consultant and writer on federal pay and performance issues. He was the managing consultant for the studies leading to the 1990 Federal Employees Pay Comparability Act and is author of "Planning Wage and Salary Programs."

Public and Private Sector Wages Barely Grew Over Twelve Months: Analysis

Whether you work for the government or the private sector, it's likely your salary didn't go up much in 2011, but federal workers saw their wages grow the least in years.

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Federal salaries increased by just 1.3 percent in fiscal 2011, the year that ran from October 2010 through September 2011. That's [the lowest rate of growth in more than a decade](#), according to *USA Today*. And federal employees weren't alone in seeing their paychecks barely budge: State and local government workers, and workers employed in the private sector, experienced wage growth of only 1.2 percent.

Meanwhile the cost of goods continues to increase at a quicker pace. U.S. prices jumped [3.9 percent in the twelve months leading up to September](#), while core inflation -- a measure that excludes food and energy prices -- rose 2.0 percent, indicating that weak income growth is straining already struggling American families.

It's hardly surprising that federal salaries didn't grow by leaps and bounds in a year where so much of the political conversation was focused on how to keep government spending in check. But the modest income growth across all employment categories is a reminder of how tight money remains for most Americans, more than two years after what economists consider the end of the Great Recession.

The *USA Today* analysis arrives at the same time as another report, from Bloomberg News, indicating that federal minimum wage in the U.S. [actually fell 20 percent from 1967 to 2010](#) when adjusted for inflation. In fact, The Huffington Post reports, minimum wage will remain below inflation-adjusted levels from the 1970s [even in the eight states that will be raising the threshold in January](#).

Higher up the earning ladder, the picture is still sobering: half of all employees in the U.S. [currently make less than \\$26,364](#), and with incomes so modest, some [45 percent of all Americans](#) are struggling to cover basic expenses like food, transportation and medical treatment.

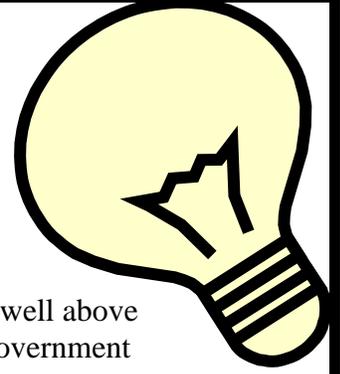
At the same time that wages for most workers have hardly grown, [corporate profits reached record levels this year](#), and companies have continued to engage in what is known as "peer benchmarking" -- a competitive practice of [paying their executives more and more](#) in order to keep pace with other companies doing the same thing.

These trends have helped contribute to [America's historically large wealth gap](#), which is closer to that of [China, Sri Lanka and Rwanda](#) than that of any economy in the developed world, and which has been cited as a major grievance by [protesters in the national Occupy movement](#).

Federal workers are slated for another year of stagnant wages, with a pay freeze in place through the end of 2012 as part of the government's efforts to rein in costs. Still, as *USA*

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Today notes, federal employees already earn [an average salary of \\$75,296](#) -- well above the median income for all U.S. workers -- and starting salaries for national-government positions are [climbing higher all the time](#).

How Much Money are You Losing Under the Pay Freeze? A union has recently published a [pay freeze calculator](#) that purports to let federal employees determine how much money they are losing under a two or three year pay freeze based on their current annual salaries.

According to its Web site, "The International Federation of Professional and Technical Engineers (IFPTE), AFL-CIO & CLC, is a diverse labor union representing more than 80,000 women and men in professional, technical, administrative and associated occupations in the United States and Canada. Our members are employed by federal, public and private employers."

Most civilian federal employees are currently under a two year pay freeze that was [enacted by the Obama administration](#) at the start of 2011. There have been discussions of possibly extending it to three years, most recently because of a [Republican proposal in the House](#) to be used to pay for extending the payroll tax cut.

So how does the calculator work? It's quite simple. You enter an annual salary into the form and it will display a cumulative table showing compounded lost salary over the course of twenty years under both a two and three year pay freeze.

Using a \$75,000 per year salary as an example, the table shows a loss of \$1,500 after one year under both a two and three year pay freeze and goes all the way up to a loss of \$70,706.89 after 20 years under a two year freeze and \$102,825.36 after 20 years under a three year freeze.

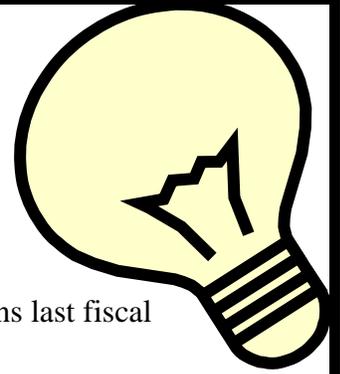
The fine print on the calculator page states, "Assumptions are based on a 2% inflation rate on the base salary. NOTE: The SSN COLA in 2011 was more than 3%; the estimated 2% inflation rate is a conservative increase."

You can [try out the calculator](#) for yourself to determine whether or not you believe the projected losses it lists for your salary are too low, too high, or about right.

OPM: 28.5% of New Hires are Vets. The federal government in fiscal 2011 hired the highest percentage of veterans in more than two decades, the Office of Personnel Management recently advised.

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OPM said that preliminary data shows 28.5 percent of new hires were veterans last fiscal year, up from the 25.6 percent figure in 2010 and 24.0 percent in 2009.

The President's Council on Veterans Employment, an interagency group that pushed agencies to hire more vets, will start a new program in spring to find jobs for formerly homeless veterans. OPM said agencies agreed to hire up to two formerly homeless veterans, and said they will match vets' skills to jobs to ensure they have a chance at a long-term career.

Prohibited Personnel Practice of the Month

Number 2: Proper Considerations in Making Personnel Decisions



Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

(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 unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of--

(A) an evaluation of the work performance, ability, aptitude, or general qualifications of

such individual; or

(B) an evaluation of the character, loyalty, or suitability of such individual.

What does this provision address?

This provision is found at 5 U.S.C. § 2302(b). Along with all of the other prohibited personnel practices, except number 11, this provision came from the Civil Service Reform Act of 1978, *Pub. L. No. 95-454*, 92 Stat. 1111. The legislative history concerning section 2302(b)(2) indicates that the section was intended to prevent the use of political influence to obtain a position or promotion in the federal government. The pertinent Senate Report explains that this provision: “restates and expands 5 U.S.C. § 3303, which currently prohibits consideration of recommendations submitted by senators and representatives, except as to character or residence. The paragraph adds a prohibition against soliciting any such recommendation. An exception is made for recommendations based on personal knowledge or personal records, where it consists of an evaluation of work performance, ability, aptitude, character, loyalty, or suitability.” S. Rep. No. 969, 95th Cong.; 2d Sess. 20 (1978), U.S.Code Cong. & Admin.News 1978, 2723, 2743.

Will the Merit Systems Protection Board (MSPB or the Board) hear a claim that the agency violated this provision?

Under 5 U.S.C. § 7701(c)(2)(B), MSPB may not sustain a personnel action “based on” a prohibited personnel practice. Generally, a prohibited personnel practice may be raised as an affirmative defense in an otherwise appealable action in an appeal filed with MSPB.

An otherwise appealable action is a personnel action that can be appealed to MSPB on its own, which means that MSPB has jurisdiction in the case.

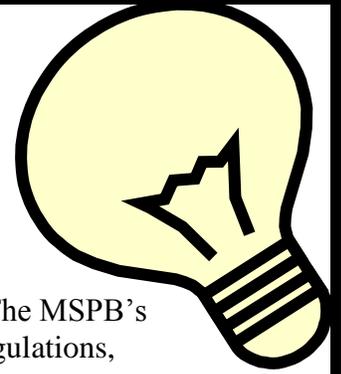
As with the other prohibited personnel practices, if you file a claim with MSPB in connection with an otherwise appealable action, we will hear your claim that you believe this provision was violated, but only if it is related to your claims about the underlying personnel action being appealed. Such claims will not be heard if your appeal is 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 based on military service), or the Whistleblower Protection Act (individual right of action appeals based on retaliation for making protected disclosures), as such appeals are not filed under MSPB’s otherwise appealable action authority, but rather specific subject-matter based statutory authorities.

Who has the burden of proving a claim under this section?

If raised in an otherwise appealable action appeal, it is raised as an affirmative defense. Under MSPB’s regulations, the appellant bears the burden of proving all affirmative defenses. That burden is by preponderant evidence which means that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as

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sufficient to find that a contested fact is more likely to be true than untrue. The MSPB's regulations can be found in section 1201 of title 5 of the Code of Federal Regulations, which can be accessed through our website under "Rules and Regulations."

Does this provision mean that an agency cannot interview employees who witness or are involved in an incident leading to discipline?

The MSPB and the U.S. Court of Appeals for the Federal Circuit, which is authorized to review all Board decisions not involving issues of discrimination, have held that this provision does not apply to situations where an agency takes statements from persons who are somehow involved in the incident giving rise to the disciplinary proceeding, but rather relates to statements or recommendations by outsiders, such as senators or congressmen. The court noted that the legislative objective was to forestall political or partisan interference in personnel actions. *Depte v. United States*, 715 F.2d 1481 (Fed.Cir.1983), overruled on other grounds by *Stone v. Federal Deposit Insurance Corporation*, 179 F.3d 1368, n.4 (Fed. Cir. 1999). The Board has also held that a deciding official did not violate section 2302(b)(2) where he was not an eyewitness to the charged events and relied upon the statements of others in making the decision to remove an employee. *Giltner v. Department of Air Force*, 50 M.S.P.R. 209, n.1 (1986).

Does this mean that a management official cannot ask a labor relations specialist for advice in taking a disciplinary action against an employee?

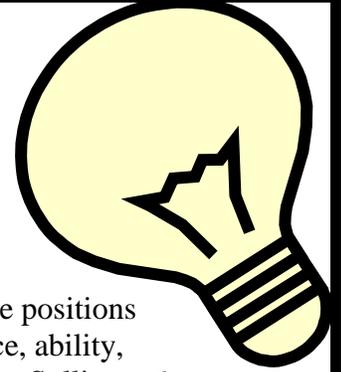
In *Gonzales v. Defense Logistics Agency*, 772 F.2d 887, 892 (Fed. Cir. 1985), the court stated that "[t]here is no prohibition against a decision-maker calling for advice from those who are not in an adversarial position with the offending employee." See also *Boudreau v. Department of Agriculture*, 883 F.2d 1023 (Fed. Cir. 1987)(Table)(non-precedential). In *Boudreau*, the court held the agency did not violate 5 U.S.C. § 2302(b)(2) by seeking advice from an employee relations specialist in the taking of a personnel action, where that individual was not in an adversarial position with the employee being disciplined. These cases were issued prior to the court's decision in *Stone*, cited above, dealing with the issue of ex parte communications by a deciding official. Any such discussions would have to comply with the dictates of due process, as required by *Stone*, that no disciplinary action be taken based on new and material evidence that is not provided to the employee so that the employee has an opportunity to respond.

Can an agency ask for recommendations from a prior supervisor when an applicant applies for a position or a promotion?

Yes. Section 2302(b)(2) prohibits solicitation or consideration of recommendations based on political considerations, and was intended to prevent the use of improper

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influence to obtain a position or promotion; recommendations for competitive positions must be based upon personal knowledge and an evaluation of the performance, ability, character and suitability of the individual involved. *Acting Special Counsel v. Sullivan*, 6 M.S.P.R. 526 (1981).

How does this provision relate to the prohibition against ex parte communications?

Section 2302(b)(2) should not be confused with the prohibition against ex parte communications in disciplinary personnel actions; they are distinctly different. An ex parte communication to a deciding official is a communication, without the knowledge of, and opportunity to respond by, the employee being disciplined and it has the effect of denying him the due process to which he is entitled under the Constitution. *Sullivan v. Department of the Navy*, 720 F.2d 1266, 107-74 (Fed. Cir. 1983).

In contrast, Section 2302(b)(2) allows for certain communications that relate to an evaluation of work performance, ability, aptitude, or general qualifications of an individual or an evaluation of the character, loyalty, or suitability of an individual when the employee is under consideration for a personnel action. In disciplinary action cases, the prohibition against ex parte communications would prevent these communications in most instances, where the information is not otherwise known, or made known, to the employee prior to making a decision to effect a disciplinary action.

If an employee discloses what he believes is a violation of 5 U.S.C. § 2302(b)(2), can it form the basis of a protected whistleblowing disclosure?

Yes. The Board has held that allegations of violations of 5 U.S.C. § 2302(b)(2) and related provisions of law can sometimes constitute whistleblowing. See *McDonnell v. Department of Agriculture*, 108 M.S.P.R. 443, ¶¶ 9-13 (2008); see also *Baldwin v. Department of Veterans Affairs*, 113 M.S.P.R. 469 (2010).

Management-Employee Relations

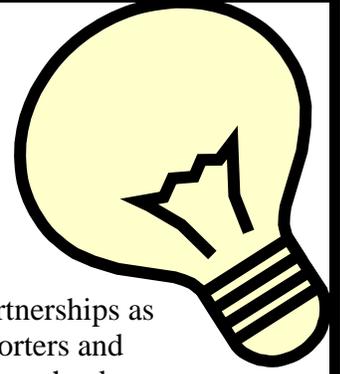
Labor-Management Partnerships/Days May be Numbered. 2012 may be labor-management partnerships' last chance to prove their effectiveness.

President Obama in December renewed the executive order re-establishing the partnership councils, which thrived under President Clinton but were quickly killed when President George W. Bush took office.

This November's election could once again spell doom for the partnership effort.

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Some Republican lawmakers and conservative pundits have criticized the partnerships as an unwarranted expansion of unions' reach into federal operations. And supporters and opponents alike agree that if Republicans retake the White House in November, the days of labor-management partnerships could be numbered.

The partnerships this year have their first opportunity to show their worth on a wide scale as agency managers and labor leaders confront how to operate in an austere budget environment.

With most agencies facing budget cuts, said Bill Dougan, national president of the National Federation of Federal Employees, agencies could use the partnership forums to find ways to operate more effectively. Dougan said labor leaders can help managers figure out more effective ways to get work done, or new technologies that could make their jobs easier.

"I think we've built a pretty solid foundation with these partnerships over the last few years," Dougan said. "Now that we've developed solid relationships, we're at the point now where we can sit down, roll up our sleeves and work with management in a collaborative, cooperative manner to make the changes that need to be made."

Dougan expects many discussions about how to make offices run more efficiently to take place at local partnerships scattered across the country.

"Obviously, these forums are not a panacea, but they're an important tool to engage each other in meaningful dialogue," Dougan said. "That means discussions about changes that are inevitable, that are going to happen across the government."

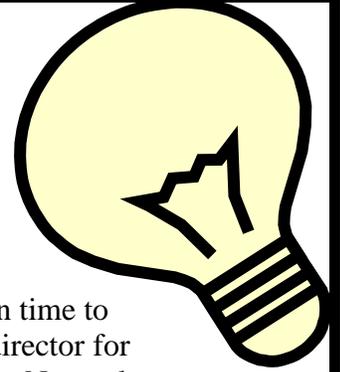
Dougan said that in 2012, unions will attempt to take a more active role in steering the national partnership council's direction. In the council's first two years, he said, managers have primarily driven the agenda to such issues as performance management. Dougan and other labor leaders want that to change, though he said in December that unions had not yet discussed what might be on their agenda.

"We're committed to getting together before the next meeting Jan. 18 and putting together our list of issues we'd like to work on," Dougan said.

Also early this year, a dozen federal facilities will finish pilot testing a relatively controversial concept: bargaining over so-called permissive subjects, such as the numbers, types and grades of employees assigned to particular jobs, and the technology they can use. Such workplace decisions are typically made exclusively by managers.

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But it's unclear whether the pilot facilities will have enough results to show in time to submit a report to President Obama by May 1. Tim Curry, deputy associate director for partnership and labor relations at the Office of Personnel Management, said in November that most of those 12 facilities hadn't yet shown significant progress on permissive subject bargaining, and they have until March 31 to submit their final results. That will leave the national council only one month to draft, review and finalize a report to Obama, which Curry warned will present a challenge.

Clearance Process is Exhaustive, but can Lead to Higher Salary, More Opportunity.

All applicants who accept offers for federal jobs must undergo a basic background investigation that — with some variation according to the opening — is designed to ensure that they have no glaring deal-breakers in their backgrounds, such as legal problems.

But more and more jobs with federal agencies and government contractors are requiring security clearances that involve more exhaustive investigations than basic background investigations. A security clearance is an authorization to a fed or contractor to access classified materials needed to do a particular job.

You cannot apply for a security clearance yourself. To obtain a security clearance you must work for an agency or contractor that requests a security clearance for you because your job requires access to classified information.

The main types of clearances are:

Confidential: Provides access to information or material that may cause damage to national security if disclosed without authorization.

Secret: Provides access to information or material that may cause serious damage to national security if disclosed without authorization.

Top secret: Provides access to information or material that may cause exceptionally grave damage to national security if disclosed without authorization.

Sensitive compartmented information: Provides access to intelligence information and material that may require controls for restricted handling within compartmented channels. Some jobs are open only to applicants who already possess security clearances. But other openings are open to applicants who don't have security clearances but would be expected to qualify for them. In government lingo, such applicants are called "clearable." Offers to clearable selectees are usually made on a contingency basis, i.e. the job offer is not solid until the selectee passes his security investigation, and will be rescinded if he fails the investigation.

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If you receive a contingency offer, remember that your new job is not a done deal until you pass your security clearance. Even if you consider your record squeaky clean, your job offer may be rescinded if snags are unexpectedly uncovered or if other problems unrelated to your background, such as unanticipated budget woes in your target agency, kill your deal.

The higher a job is up the security clearance ladder, the more exhaustive its associated background investigation will be. But all investigations for security clearances require applicants to complete Standard Form 86, which is accessible on the Office of Personnel Management website, www.opm.gov. Investigations also include interviews with the applicant, the applicant's current and former friends, neighbors, colleagues, bosses, psychologists and psychiatrists; medical examinations to ensure the applicant's medical and mental fitness; checks of the applicant's travel history, foreign contacts, current and previous residences, academic records, military record, credit history, court and police records, employment history; and a polygraph test.

Depending on your target job and employer, you might need a security clearance to advance. Also, feds and contractors possessing clearances of "secret" and above are generally more marketable and generally earn significantly higher salaries than their counterparts whose jobs don't require security clearances.

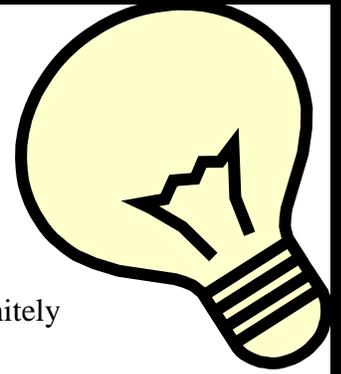
What types of jobs require clearances? Jobs addressing financial management, scientific research, diplomacy, defense, auditing, law enforcement and intelligence are most likely to require security clearances. Indeed, virtually everyone who works for the FBI — even administrative assistants — must pass security clearances.

Also, certain types of jobs are particularly likely to require security clearances — such as human resources personnel who access staffers' personnel information, accountants who access confidential financial information, auditors who access legal information, and information technology professionals who access secure systems, to name just a few.

Duty to Provide Reasonable Accommodation. In *Sigiefredo Sanchez v. Dep't of Energy*, 2011 MSPB 95 (11/22/11), the plaintiff was removed from his position of emergency operations specialist in the transportation and emergency control center of the agency's National Nuclear Security Administration office of secured transportation, on charges of failure to maintain a condition of employment. The position required certification under the agency's Human Reliability Program (HRP). The agency had revoked Sanchez's HRP certification on the basis that Sanchez had a psychological or physical disorder that impaired his performance of his assigned duties after the agency's psychologist diagnosed him with mixed receptive expressive disorder, affecting his ability to read, express himself accurately in writing, and understand material that is

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presented in an auditory fashion. Prior to his removal, the agency had indefinitely suspended him pending resolution of his HRP certification.

Sanchez appealed the indefinite suspension and the removal action to the MSPB. He alleged that the agency failed to provide him with the reasonable accommodation of reassignment to a position that did not require HRP certification. The administrative judge affirmed Sanchez's removal and found that, although Sanchez established that he was disabled, he had failed to establish that he was a qualified individual with a disability because he did not show that he was able to perform the essential functions of his position with or without an accommodation. The administrative judge found that the agency was not obligated to provide him with a reasonable accommodation. The administrative judge also held that the agency had properly used the indefinite suspension procedures under the circumstances of this case.

On appeal to the full Board, Sanchez alleged that the administrative judge failed to analyze whether he was capable of performing the essential functions of other positions that were available. The Board determined that in order to establish that an indefinite suspension is reasonable the agency must show that a lesser penalty, such as reassignment, would be ineffective under the circumstances. The Board found that the record was insufficient to establish whether the penalty of indefinite suspension was reasonable and remanded the case for a determination of whether reassignment, rather than indefinite suspension, would have been effective. The Board also held that Sanchez was entitled to be considered for reassignment to a vacant position as a form of reasonable accommodation. The Board concluded that the agency had failed to engage in the interactive process in order to identify a reasonable accommodation and remanded the case for further adjudication.

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

For additional information please see Tips and Tidbits 12-2010.

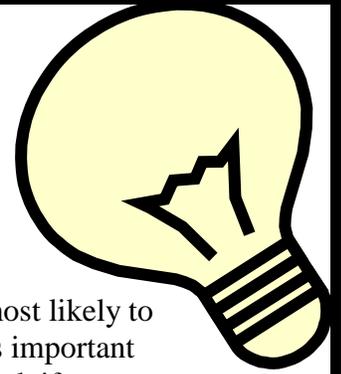
Training, Self-Development, and Personal Improvement

Putting out the Fires. *Tackling the most dreaded tasks upfront can help you breeze through the rest of your to-do list.*

There's a saying that if you wake up every morning and the first thing you do is eat a live frog, nothing worse can happen for the rest of the day. According to Brian Tracy, professional development expert and author of *Eat That Frog! 21 Great Ways to Stop Procrastinating and Get More Done in Less Time* (Berrett-Koehler, 2001), your "frog"

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should be the most difficult task on your list of things to do, the one you're most likely to put off. If you let that frog sit around on your plate while you putter with less important work, it can drain your energy without you even realizing it. On the other hand, if you "eat" that task first, Tracy says, it will give you energy and momentum for the rest of the day.

Eat That Frog!, which will be re-released in comic book form on Jan. 1, 2012, advises an initial concession. As much as most people don't like to admit it, Tracy says it's crucial to accept that there is never enough time to do everything you have to do. "You can get control of your tasks and activities only to the degree that you stop doing some things and start spending more time on the few activities that can really make a difference in your life," he writes.

The first step to eating the frog is to identify it. Tracy advises sitting down and deciding which of your many assignments is the most important - and the most dreaded. Keep in mind that 20 percent of activities account for 80 percent of results; don't waste time on functions that are unlikely to have a significant impact on the areas that are most important to you and your organization. Write down goals and objectives, and plan out every day, on paper. "Every minute spent in planning can save five to 10 minutes in execution," he writes.

Tracy's method takes diligence. He advises prioritizing each task that comes across your plate from A to E (most to least important) and always focusing on the most critical work. By practicing "creative procrastination," deliberately putting off low-value tasks, you will free up enough time to do the few things that truly matter.

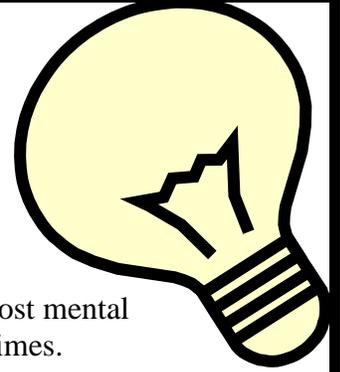
It is also worth spending time identifying key constraints, the bottlenecks or choke points that prevent you from accomplishing your most important objectives more efficiently. Then, Tracy says, alleviating those constraints should become a top priority.

In taking the time to identify top tasks, plan how to address them and then begin work, you may very well become overwhelmed by the size or complexity of the job you have been putting off. That is why it's the frog. Tracy reminds his readers to take just one step at a time. Putting something off because it is too big will not make it smaller, but chipping away at it in an organized and focused fashion will. In some cases, breaking down large, complex assignments into smaller pieces can be helpful.

Tracy also suggests some tricks. It's crucial to develop a sense of urgency. He recommends putting pressure on yourself by imagining you have to leave town for a month, and then work as if you have to get all your major tasks completed before you leave. You also can maximize productivity by organizing your day around large blocks of time when you are free to concentrate on your most important assignments for extended

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periods. Finally, pay attention to the periods of the day when you have the most mental and physical energy and structure your most demanding work around those times.

The payoff, Tracy says, is big. The more you tackle these critical tasks according to a structured plan and with complete concentration, the more knowledgeable and skilled - and ultimately faster - you will become. And the sooner you swallow that frog for good.

Congress Passes Federal Internship Reform. New legislation concerning the federal internship program passed both chambers of Congress and is awaiting President Obama's signature.

Rep. Gerry Connolly, D-Va., sponsored the measure, which recently passed through Congress after being lumped into a larger Defense authorization package. The measure seeks to standardize the way federal agencies conduct internship.

He stated in a press release that the ultimate goal of the bill, co-sponsored by Rep. Brian Bilbray, R-Ca., is to help agencies more easily identify high-performing interns who can transition into full-time jobs as more members of the baby boomer workforce retire. He also expressed his desire for the bill to "make internships a better educational experience for participants."

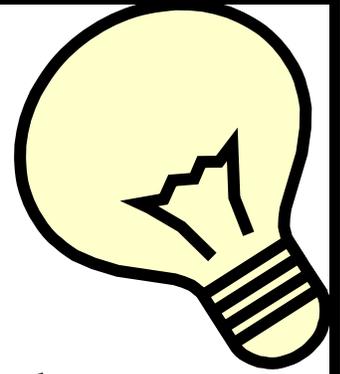
Connolly first introduced the 2011 Federal Internship Improvement Act in March. In November, the Office of Personnel Management unveiled their own restructuring of the federal internship program, which OPM Director John Berry promised would go into effect by May 2012.

For more detailed information on the revitalized program, please see Tips and Tidbits 12-2011.

Five Steps to Infuse "Magic" in Your Leadership Style. As any seasoned business leader can tell you, creating an exemplary team takes knowledge, perseverance, and a little leadership magic. The "magic" of a great leader is developed over time and through years of professional awareness. The qualities that make a good team a great one depend largely on the leader's ability to create an environment of complete engagement. When you are in the presence of a team that functions extraordinarily well, you can feel the difference. Here are five tips that go beyond the curriculum of management training; tips you can use to unleash a little magic in your own leadership style.

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1. Show Gratitude

Authentic gratitude for a job well done is a powerful motivational tool. Setting the tone for a team to recognize and reward one another with positive words and written comments builds ongoing rapport. Gratitude should be expressed in accordance with how the recipient is most comfortable receiving it. Extroverts generally appreciate public attention, while more reserved team members would generally prefer one-on-one recognition. Knowing and respecting each person's differences is another way to show your gratitude for individuality. While gratitude is often expressed during the yearly review process, excellent leaders communicate moments of gratitude all year long.

2. Exercise Forgiveness

Perfection is an ideal which can help teams push toward excellence. In order to be an excellent team, a certain amount of risk and drive to push change and try new solutions is necessary. Sometimes in the process of driving for excellence there are road bumps and team members (including leaders) make mistakes. Listening to the employee and encouraging the "teachable moment" in a mistake is part of the patience that makes a great leader. While remaining clear about accountability, you can still move the conversation in an action-oriented team driven problem solving direction with the intent of restoring trust and confidence. This practice is effective leadership in process and goes a long way in building team loyalty and overall synergy throughout your team.

3. Cultivate Rapport

Building communication with each team member and knowing them well enough to have connection with them individually will help you orchestrate a more cohesive think tank among them collectively. Set the tone for authentic candor in your group meetings. Take the time to learn the most effective communication strategies for your team members. Some people need time to process a conversation before responding; some people enjoy thinking aloud; others need time to jot down notes as part of their thinking process. When team members are encouraged to understand and work in harmony with communication styles, then you will receive more authentic ideas and more well developed solutions. Online communication profiles and questionnaires exist to help you with your rapport building strategies. Rapport is a give and take; if you want honest connections then you have to find ways to connect honestly with your team.

4. Mindfully Construct Challenge

Part of being a thoughtful, skilled leader is spending time mindfully constructing attainable challenges for your team. Involve the team in setting the parameters of the challenge and involve them in the ongoing assessment. You want your team to have the

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intellectual stimuli of a solid challenge, but you do not want to set them up for defeat with unrealistic time lines and too many goals. If you are managing a team that has been together or at a company longer than you have been on board, consider asking them for input and take their ideas into careful consideration. Teams work harder and produce better results when each individual feels personally invested in the process.

5. Actively Give Support

Highly experienced leaders know the details of each team member's job description and also have taken the time to understand what each team member juggles on a daily basis. This not only helps when a team member takes a vacation or is out ill, but also for understanding where support is needed. Sometimes the team needs a morale booster like a sponsored lunch, or a guest speaker. Support might mean knowing the cultural and religious differences on a team and allowing flexibility around significant holidays. Perhaps there is a piece of older equipment that is a source of constant team frustration. Although you may not immediately be able to address all needs, just knowing that you are aware of them and actively engaged in the process of resolving what you can is a strong leadership skill. If you have built honest respectful rapport, then team members will feel comfortable talking with you about areas of support. Maybe an adjustment in the project is needed, or an adjustment in work groupings is in order. Taking the time to seek out ways to support your team not only in training but also in the qualitative experience of team work will create better trust in your leadership acumen.

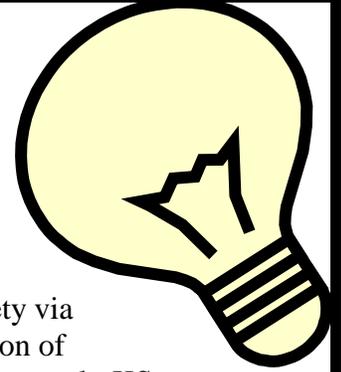
Conclusion

Part of becoming an excellent leader is having the leadership skills and knowledge to effectively manage a team of individuals as one cohesive force. In order to create exceptional teams, a leader also needs a touch of what looks like magic from the bystanders who witness team greatness. Paying close attention to the softer skills needed to complement your management training will create a more holistic leadership style which in turn might generate a little magic all its own.

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.

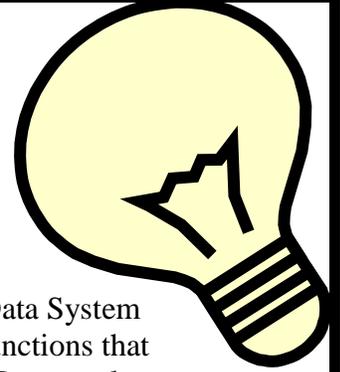
<http://www.amsc.belvoir.army.mil/ces/>
<http://www.train.army.mil>. Click on the [Login] button upper right and key in your AKO

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.

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).

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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.

BLANCHE D. ROBINSON

Human Resources Officer

Fort Benning CPAC

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