

Union Filing Office Of Special Filing against the US Small Business Administration for the Violation of Prohibited Personnel Practices in their hiring and selection practices:

1. Discrimination

An agency official shall not discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, disability (or handicapping condition), marital status, or political affiliation. [5 U.S.C. § 2302\(b\)\(1\)](#)

This PPP wraps together a number of different laws that prohibit discrimination.

For discrimination claims regarding race, color, religion, sex, national origin, age, or disability (or handicapping condition): Please note that while OSC is authorized to investigate allegations of discrimination on these bases, there are Equal Employment Opportunity (EEO) procedures for investigating such complaints already established in agencies and the [Equal Employment Opportunity Commission \(EEOC\)](#). Therefore, to avoid duplicating those investigative processes, OSC generally defers complaints involving discrimination on these bases to the EEO process.

For discrimination claims regarding marital status and political affiliation: OSC accepts complaints of discrimination on these bases. Since these kinds of discrimination are not within the jurisdiction of the EEO process, we do not defer them to any other complaint processes.

Example: A supervisor discovers that a subordinate is a member of the Green Party. Shortly thereafter, the supervisor begins to take actions against the employee, including, for example, lowering the employee's performance appraisal rating for that particular period.

For discrimination claims regarding sexual orientation and gender identity: These types of discrimination may be covered under this provision, but are also covered under the PPP referred to as “Other Discrimination,” or [5 U.S.C. § 2302\(b\)\(10\)](#). OSC investigates these claims and generally does not defer them to any other complaint processes. EEOC has stated that discrimination claims on these bases also may be brought under the EEO process.

In January 2014, OSC and EEOC signed a new [memorandum of understanding](#) on coordination in the enforcement of anti-discrimination laws in the federal workplace.

2. Considering Inappropriate Recommendations:

An agency official shall not request or consider a recommendation based on political connections or influence. [5 U.S.C. § 2302\(b\)\(2\)](#)

This PPP prohibits requesting or considering recommendations about an employee or applicant unless the recommendation is based on the personal knowledge of the employee or records of the person providing it. Put another way, this means that a recommendation to hire or promote someone in the federal workplace must be ignored unless the person making the recommendation has actual knowledge of the person’s abilities as they would apply to the position in question. Courts have ruled that the legislative intent of this PPP was to prevent the use of political influence to obtain a position or promotion. Thus, a person alleging this PPP must show that political influence was a factor in the recommendation at issue in their complaint.

Example: A member of Congress contacts a federal official who is hiring an applicant and recommends that the official hire a constituent. That Congressman does not have personal knowledge of the constituent’s work performance or character. If the official acts upon that recommendation, the personnel action would fall within this prohibition. On the other hand,

recommendations from colleagues or from other supervisors at the agency would not fall within this prohibition, unless there is an element of political interference. Likewise, a member of Congress may recommend someone for an open position, as long as the member has personal knowledge of the candidate's qualifications.

3. Coercing Political Activity

An agency official shall not coerce the political activity of any person or retaliate against an employee for refusing to engage in political activity. [5 U.S.C. § 2302\(b\)\(3\)](#)

This PPP is in place to help keep partisan politics out of the federal workplace. An employee cannot be pressured into political activity by a superior. This section also prohibits retaliation against an employee for refusing to engage in political activity. Allegations of this kind should be filed with OSC's Hatch Act Unit by clicking [here](#).

Example: A subordinate employee declines to donate money to a candidate his supervisor fervently supports. After learning of this, the supervisor begins to deny that employee some privileges of employment. For instance, the supervisor removes the employee's teleworking conditions and denies him requested training.

4. Obstructing Competition

An agency official shall not intentionally deceive or obstruct anyone from competing for employment. [5 U.S.C. § 2302\(b\)\(4\)](#)

This PPP prohibits an agency official from willfully obstructing a person's right to compete for a job. Note that a simple failure to select an applicant, without more, is not a violation of this section.

Example: A supervisor falsely rates a subordinate employee who is competing for a promotion as unsatisfactory because the

supervisor knows that only employees rated satisfactory and above can obtain the promotion.

5. Influencing Withdrawal from Competition

An agency official shall not influence anyone to withdraw from competition in order to improve or injure the employment prospects of any person. [5 U.S.C. § 2302\(b\)\(5\)](#)

This PPP means that an agency official cannot try to persuade an applicant to withdraw his or her name from consideration for a job. For a violation to occur, this influence or persuasion has to have happened in order to help or hurt another person's employment prospects. However, the applicant does not have to actually withdraw from competition in order for the action to be a violation. This section does not bar an agency official from counseling an applicant to withdraw from competition for legitimate reasons, for example, because the applicant is not highly qualified or a better position is available.

Example: A veteran is at the top of the list for hiring, which means that he is blocking other candidates from being selected for this particular position. The selecting official, hoping to hire another applicant lower on the list, encourages the veteran to apply for another vacancy instead. This would be an example of influencing a withdrawal from competition, and could also be a violation of a veterans' preference requirements under [5 U.S.C. § 2302\(\(b\)\(11\)\)](#).

6. Granting Unfair Advantage

An agency official shall not give an unauthorized advantage in order to improve or injure the employment prospects of any person. [5 U.S.C. § 2302\(b\)\(6\)](#)

This PPP, which can be complex, prohibits agency officials from providing a wrongful advantage to an applicant in order to help or hurt another person's chance of obtaining the job. Note that pre-selection requires evidence that the hiring process was manipulated with the intent of improving or injuring a particular person's chances of selection.

Example: A selecting official hopes to hire an attorney he has known for many years into an investigator position. When the announcement is issued for the investigator position, the attorney does not qualify for the position. The selecting official then has the announcement rewritten to include legal requirements, such as legal analysis and litigation, even though this is not necessary for an investigator position. Ultimately the attorney is hired for the investigator position.

7. Nepotism

A federal government employee shall not engage in nepotism (i.e., hire, promote, or advocate the hiring or promotion of relatives). [5 U.S.C. § 2302\(b\)\(7\)](#)

In this section "relative" is defined by law as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister.

This PPP simply states that federal government employees cannot hire or promote their relatives, or even push for their relatives to get jobs or promotions. Note that nepotism goes

beyond hiring; it also has to do with the benefits and advantages of employment. Thus for example, completing a relative's annual performance rating or advocating for a relative to be given easier duties would also be prohibited under this section. Please note, however, that it is not prohibited to have two relatives work for the same agency if they are not in the same chain of command. It is also acceptable to have two relatives work in the same chain of command, as long as the official with personnel authority is not involved in any personnel action affecting the relative.

Example: An official is in the chain of command of his spouse. He directs his employee, who directly supervises the spouse, to give the spouse a bonus.

8. Whistleblower Retaliation

An agency official shall not retaliate against an employee for whistleblowing. [5 U.S.C. § 2302\(b\)\(8\)](#)

This PPP prohibits agency officials from taking, failing to take, or threatening to take a personnel action because of an employee's whistleblowing. To prove whistleblower retaliation, one must show:

1. The employee must have disclosed what he or she reasonably believes to be:
 - a violation of law, rule, or regulation;
 - gross mismanagement;
 - gross waste of funds;
 - an abuse of authority; or
 - a substantial and specific danger to public health or safety.

2. The personnel action in question must have been taken (or not taken, such in the case of a promotion), threatened, or influenced by an official who knew of the employee's disclosure; and
3. The employee's disclosure was a contributing factor in the personnel action.

** This section also prohibits retaliation against government scientists who challenge censorship or make disclosures concerning the integrity of the scientific process if the censorship will cause one of the five types of misconduct described above.

Example: An employee reports to her agency's internal affairs office that her supervisor illegally brought a gun into the workplace. The internal affairs investigator discloses the identity of the employee to the supervisory chain. Shortly thereafter, the employee is subjected to a retaliatory investigation resulting in her termination from employment based on extremely weak and unsupported charges of misconduct.

9. Other Retaliation

An agency official shall not retaliate because an employee:

1. filed a complaint, grievance or appeal;
2. testified for or helped someone else with one of these activities;
3. cooperated with or disclosed information to the Special Counsel or an Inspector General; or,
4. refused to obey an order that would require the employee to violate a law.

[5 U.S.C. § 2302\(b\)\(9\)](#)

This PPP prohibits agency officials from taking, failing to take, or threatening to take a personnel action because an employee engaged in any of the four protected activities mentioned above. To prove a claim of retaliation under this section, one must show:

1. The employee engaged in a protected activity;
2. The agency official with knowledge of the employee's protected activity took, failed to take, or threatened to take a personnel action against the employee; and
3. There is a causal connection between the protected activity and the personnel action.

Example: A supervisor gives undesirable duties to a subordinate employee who the supervisor knows testified in another employee's union grievance.

10. Other Discrimination

An agency official shall not discriminate due to conduct that does not adversely affect job performance. [5 U.S.C. § 2302\(b\)\(10\)](#)

This PPP prohibits agency officials from penalizing their employees for conduct that has no adverse impact on their job performance or on the ability of others to perform their jobs. This includes sexual orientation and gender identity discrimination. Management may, however, take action based on an employee's conduct, even if it occurred off-duty, if it affects job performance.

Example: A supervisor discovers that one of her subordinate employees is gay. Following the supervisor's discovery, the gay

employee is targeted for disparate treatment. For instance, the employee's time and attendance is scrutinized daily and the employee is forced to take leave for as little as three minute absences, while other employees' similar absences are ignored. The supervisor also changes the targeted employee's schedule to night shift work and openly disparages the employee at staff meetings.

11. Veterans Preference

An agency official shall not take or fail to take, recommend, or approve a personnel action if the official knows that doing so would violate a veterans' preference requirement. [5 U.S.C. § 2302\(b\)\(11\)](#)

This PPP ensures that the veterans' preferences for federal government jobs are honored. Though OSC plays a role in enforcing these protections, we are not the proper venue for filing veterans' preference complaints. Allegations of this kind should be filed with the Veterans Employment and Training Service (VETS) at the Department of Labor (DOL) by clicking [here](#). **Please note that you must file your complaint with VETS within 60 days of the alleged violation.**

Example: A veterans' preference requirement may place a veteran at the top of a list of eligible candidates for a job. If a supervisor fails to observe a veterans' preference requirement, such as not appropriately ranking a veteran in accordance with his military service, that could be an example of a veterans' preference violation.

12. Violating Rules That Implement a Merit System Principle

An agency official shall not take or fail to take a personnel action if doing so would violate a law, rule or regulation implementing or

directly concerning the merit system principles. [5 U.S.C. § 2302\(b\)\(12\)](#)

Sometime referred to as the “catch-all” prohibition, this PPP prohibits agency officials from taking, or failing to take, a personnel action that violates any other civil service law, rule, or regulation that was designed to uphold the merit system principles.

There are numerous laws, rules, and regulations governing various aspects of federal employment, including details, reassignments, performance evaluations, promotions, transfers, etc. Title 5 of the United States Code and Title 5 of the Code of Federal Regulations contain most of the laws and regulations. The number and types of laws and rules which might apply to a personnel action are diverse, and this PPP could apply to personnel actions that are taken outside legally required time frames, but it also includes actions taken against employees in violation of their Constitutional rights, or right to contact members of Congress.

Example: In his personal capacity, an employee writes a letter to the editor regarding an issue of public interest. Management takes an action against that employee, arguing that the employee should not be airing his grievances to the media.

13. Imposing Nondisclosure Agreement That Doesn't Allow Whistleblowing

An agency official shall not implement or enforce a non-disclosure policy, form or agreement if it does not contain a specific statement notifying employees of their rights, obligations, or liabilities relating to classified information, communications to Congress, whistleblowing to an Inspector General, or any other whistleblower protection. [5 U.S.C. § 2302\(b\)\(13\)](#)

This PPP, which was added in 2012 under the Whistleblower Protection Enhancement Act, requires agencies to inform employees who are subject to non-disclosure agreements that the agreement does not supersede employees' whistleblowing rights, such as reporting wrongdoing to OSC or Congress.

Example: If a federal agency has a general policy that employees may not disclose any information they learn of during the course of their jobs, then that policy must include language that employees also have the right to engage in whistleblowing and to file disclosures with OSC and other entities.

Thanks,

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