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Consider all relevant factors when determining reasonable penalties

When it comes to discipline in the federal workplace, the penalty must fit the crime. Overly harsh or inconsistent penalties will almost certainly be mitigated by the **Merit Systems Protection Board** on appeal.

However, the board will give great deference to the agency's penalty if officials can prove it was based on a thoughtful analysis of the 12 factors outlined in *Douglas v. Veterans Affairs*, 5 MSPR 280 (1981), 61 FMSR 7037.

These factors are the Holy Grail when it comes to discipline, and statistics show the MSPB mitigates penalties in only a small percent of cases — 1.4 percent in FY 2006 — when they are properly considered, said **Robert Erbe**, a staff attorney with **Customs and Border Protection**.

"The board is not some super personnel agency," Erbe said during an **LRI Publications'** audio conference, *Douglas Dos and Don'ts: Using MSPB Case Law to Determine the Right Penalty*. "If you do your job during the discipline process, it is likely your action will be sustained."

The key, Erbe said, is proving a nexus between the misconduct, the penalty and the efficiency of service. It's also important to understand the purpose of

(See **FACTORS** on page 70)

Seasoned federal workforce being replaced by a more educated one

The government has been quick to promote its employees in-house, accepting job experience in lieu of academic credentials, a recently released, **Congressional Budget Office** study suggests.

Less than half the current federal workforce have college degrees. But 49 percent is a significant improvement since 1975, when 30 percent of government employees held a degree, according to a 2005 sample study of the government's 1.4 million full-time, permanent federal employees at that time.

This indicates that many workers have climbed the ranks from support to administrative positions, said **John Paiguta**, the **Partnership for Public Service's** vice president for policy.

"Many people who are professionals started as assistants and demonstrated that they've acquired a certain skill set and level of understanding and can compete for promotion from support to professional ranks," he told **FEDHR**. "That's also created some issues as to whether agencies are doing a good enough job looking for higher competencies or if they had adequate prepared individuals."

(See **WORKFORCE** on page 71)

Government outpaces private sector with telework

After years of congressional pressure, the federal government may finally be warming up to telework.

Every federal telework coordinator surveyed in September 2006 by the public-private partnership, the **Telework Exchange**, said they had witnessed more interest in telework. Additionally, 88 percent said their agency tracks and reports telework performance, an improvement from 74 percent in 2005.

An analysis by **CDW Government Inc.**, a leading technology provider for businesses and government, also shows telework is getting more of a positive reputation among feds. More than half the federal workforce is eligible to telecommute, compared to a paltry 15 percent in private industry.

That's not to say there isn't room for improvement, however. The latest data from the **Office of Personnel Management**, which requires agencies to report telework performance, show that only about 8 percent of the federal workforce—or 140,694 employees—telecommuted in 2004. Some agencies still do not have a formal telework program.

One problem is that coordinating telework programs is often a collateral duty. Last year, 53 percent of coordinators spent about a quarter of their time on telework, the Telework Exchange survey found. Only 12 percent spent three-quarters of their time, which is a small but significant improvement from 2005, when none of them did.

WORKFORCE (continued from front page)

However, times are changing. As the makeup of the federal workforce changes and the government strives to compete with the private sector, the government will become less inclined to hire or promote workers who do not have academic degrees.

Paiguta said the trend is particularly evident in the HR profession. Part of the reason is that many jobs that don't require college credentials no longer exist. Lower level jobs traditionally filled by high school graduates are starting to go to contractors or have been automated due to advances in technology. There has also been significant consolidation thanks to the HR Line of Business initiative, which enables agencies to farm out routine HR processing functions to five designated service centers.

Paiguta predicts the number of federal employees with college degrees will grow to 60 percent in the next decade because the need for administrative and professional positions workers will increase across all professions.

"A lot of routine stuff is being done by nonfeds. There's an understanding that jobs themselves are changing and becoming more demanding," he said.

According to the study, this transformation has already begun. Among professional occupations, such as accountants, nurses, architects, lawyers and economists, about 90 percent have a college degree.

Legislation recently introduced by Sen. **Ted Stevens**, R-Alaska, and **Mary Landrieu**, D-La., would change that. The Telework Enhancement Act, S. 1000, would require each agency to have at least one full-time employee focused exclusively on telework. It would also make all federal employees eligible for telework unless deemed otherwise by their agencies.

"This legislation will help American families by giving federal workers the opportunity to continue serving the nation while spending more quality time with their loved ones," Landrieu said in a statement.

Larry Schwartz, team leader for the **Patent and Trademark Office's** telework program project, said during a recent Telework Exchange Webinar that top management support is critical. His agency benefited from getting the chief information officer involved in everything from equipment selection to training and support from the very beginning.

The most important part of securing management buy-in for telework is shifting the focus from "evaluation by observation to evaluation by results," he said. About 67 percent of those surveyed by the Telework Exchange cited management resistance as the top barrier.

"It is important to explain to employees up front how working from home is the same from working in the office and how it's different," he said. ■

Findings

Some other findings by the CBO include:

- The government employs fewer women than the private sector—39 percent versus 42 percent. The difference is most pronounced in management and professional occupations, with women comprising 42 percent of these jobs in government and 47 percent in private industry.
- As of 2005, a quarter of full-time government employees were at or above the minimum retirement age of 50, with about 10 percent of them eligible to retire immediately without a reduced pension.
- Involuntary separations generally occurred after an average of eight years on the job. ■

Slightly more than 50 percent of employees in administrative jobs, which demand analytical and writing skills, hold a college degree. Examples of these jobs are physician's assistants, paralegals and financial analysts. Fewer than 15 percent of employees in technical and support occupations have completed college.

Despite the heated competition between the two sectors, the government has a much larger portion of employees with degrees than private industry. Some 43 percent of government workers have a bachelor's degree, while only 28 percent of nongovernment workers do. ■