

# ISSUES OF MERIT

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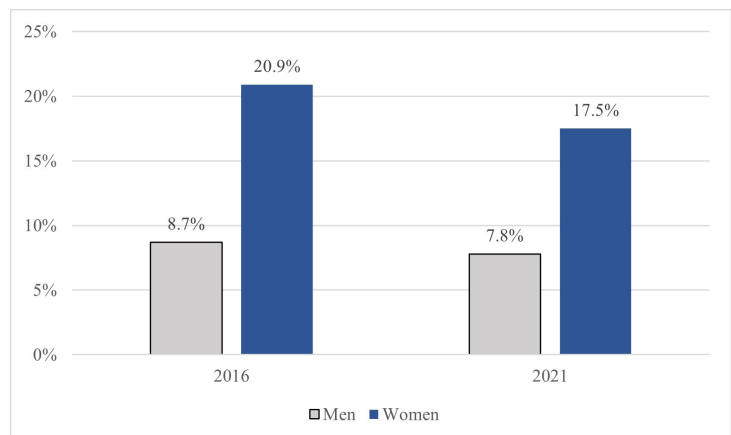
## Sexual Harassment in Federal Workplaces: 2021 Update

Despite the renewed attention given to sexual harassment in recent years, sexual harassment and other forms of gender-based discrimination continue. The Merit Systems Protection Board (MSPB), as part of its role as a guardian of Federal merit systems, has surveyed employees regarding their experiences with sexual harassment in the Federal workplace since 1979. Our recent research brief, *Sexual Harassment in Federal Workplaces: 2021 Update*, compares results from the most recent Merit Principles Surveys (MPSs), which were administered in 2016 and 2021.

Much has changed in Federal workplaces and beyond in the years since MSPB administered the MPS 2016. The 2017 #MeToo movement brought the discussion of sexual harassment and sexual assault to the forefront. Then, the pandemic greatly changed how and where many employees work. Therefore, the MPS 2021, which was administered between January and April 2021, included a period of “maximum telework” for some of the Government’s workforce. This may have influenced responses to questions that required employees to base their answers on experiences in the prior 2 years.

As shown in the figure to the right, 17.5 percent of women and nearly 8 percent of men reported experiencing one or more instances of sexual harassment. That is a slight decrease in sexual harassment compared to 2016, but still represents an unacceptable level in Federal workplaces.

**Percent of Employees Indicating They Experienced Sexual Harassment  
At Least Once in the Preceding 2 Years, 2016 and 2021**



As seen in the table on the next page, women remain more likely to perceive that they are sexually harassed than men on every type of sexual harassment behavior, except for

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unwelcome exposure to sexually oriented material. The most frequently perceived sexual harassment behaviors for women and men include an unwelcome invasion of personal space; unwelcome sexual teasing, jokes, comments, or questions; and derogatory or unprofessional terms related to sex or gender.

**Types of Sexual Harassment Behaviors Experienced, 2021**

	% of All Respondents	% of Female Respondents	% of Male Respondents
<b>All Behaviors</b>			
Any type of sexual harassment behavior (of 12) experienced	12.6%	17.5%	7.8%
<b>Gender Harassment</b>			
Unwelcome exposure to sexually oriented conversations	4.2%	5.7%	2.9%
Unwelcome sexual teasing, jokes, comments, or questions	5.5%	8.2%	3.1%
Derogatory or unprofessional terms related to sex or gender	5.3%	7.0%	3.6%
Unwelcome exposure to sexually oriented material	1.4%	1.3%	1.4%
<b>Unwanted Sexual Attention</b>			
Unwelcome invasion of personal space	6.4%	9.0%	3.7%
Unwelcome sexually suggestive looks or gestures	3.7%	6.2%	1.5%
Unwelcome communications of a sexual nature	3.2%	4.9%	1.7%
<b>Sexual Coercion</b>			
Pressure for dates	1.3%	2.2%	0.5%
Stalking (intrusion into your personal life)	1.4%	1.9%	0.8%
Offer of preferential treatment for sexual favors (quid pro quo)	0.5%	0.6%	0.4%
Pressure for sexual favors	0.6%	1.0%	0.3%
Sexual assault or attempted sexual assault	<0.5%	0.5%	<0.5%

As discussed in our previous sexual harassment report and in our recent research brief, sexual harassment harms employees who experience or observe it, the organization, and even potentially the public, due to the negative impact on agency performance. Therefore, agencies should remain vigilant and strive to eliminate all forms of sexual harassment. By understanding what types of behaviors employees are experiencing, agencies can better formulate approaches to effectively address them and prevent them from recurring. ❖

# Going Beyond Dashboards

*To effect real organizational change, leaders need to look beyond what is happening in the organization to identify why it is happening.*

Once again, the Office of Personnel Management (OPM) has successfully administered the Governmentwide Federal Employee Viewpoint Survey (FEVS), and agency leaders are on the edge of their seats waiting to see how their agencies did. Data from sources like the FEVS are important tools in helping ensure that agencies can identify workforce trends, assess the effects of management practices, and gauge whether existing policies create optimal conditions for mission accomplishment.

There are different kinds of data that can be useful for these purposes, including employee- and customer-survey data, workforce data trends, performance measurement results, etc. The FEVS is just one of many data sources available to agency decision-makers to help them identify their organization's strengths, weaknesses, and opportunities to improve.

For data to be actionable, it needs to be accessible, understandable, and interpretable by many types of stakeholders. The Government doesn't have a lack of data, but it has struggled with making data available to decision-makers in a usable format. Recently, however, OPM has taken steps to try to resolve that issue.

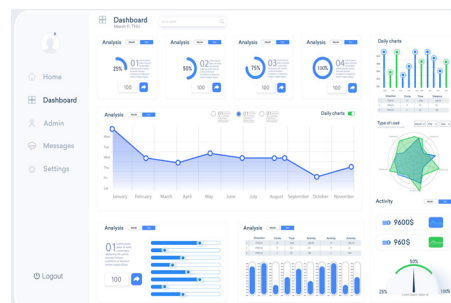
OPM created the new Data Portal, an enterprise-wide source for human capital data across the Federal Government. It hosts many different kinds of data sources and dashboards that are accessible to agency leaders, employees, stakeholders, and the public. This is progress in terms of providing actionable data, all in one location. I encourage you to explore the website and all it has to offer, including the interactive FEVS and Hiring Manager Satisfaction Survey dashboards, the Federal Cyber Workforce data dashboard, and the Federal workforce statistics offered through the FedScope application.

But I also encourage you not to stop there. Having access to data is important, but using the data in a meaningful way is what creates change. Dashboards play a critical role in telling you what is going on in the agency—e.g., your agency's employee engagement level is X percent based on survey responses. They can also tell you how you compare to other agencies in that category—yes, you're doing much better than a comparable agency on this one data point, but maybe not as well as other agencies. However, dashboards won't explain why a phenomenon is occurring—e.g., why the engagement level is at X percent. For that, you need to dig deeper into the data.

To get to the why behind the what, you need to have experienced staff who can take you from visualization to insight. I call these people human capital strategists, and they are not easy to come by. They have advanced analytical skills that are in high demand, so you will need to invest in recruiting, developing, and retaining employees with these kinds of skill sets.

There are many strategies for exploring why something is happening. Advanced statistical analyses can identify relationships among your data and predict future events based on past trends. Qualitative data sources, such as focus groups, exit interviews, and stay interviews, can be plumbed to gain insight into how employees feel, why they feel that way, and what changes could be made to address those perceptions. As you use additional analytical strategies to explore the available data, you can articulate potential explanations and then test your assumptions to see what works to address issues, what doesn't, and where to go from there.

Ultimately, understanding the why is how you change the what. To understand the why, you need to go beyond looking at the dashboards to digging into what is driving the results they present. When you identify the story behind the data, you will be in a stronger position to effect real change in the organization. ❖



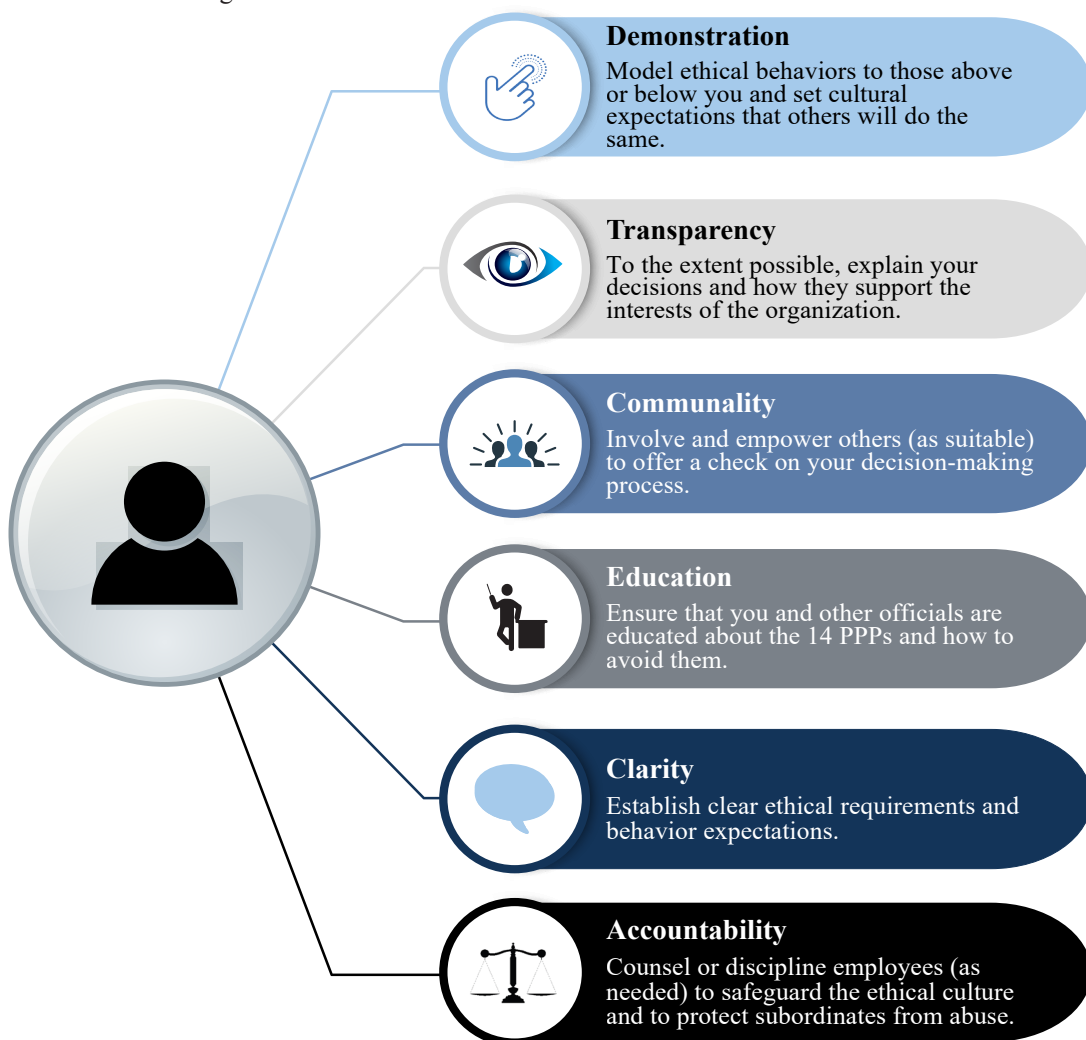
*Tiffany J. Lightbourn, Ph.D.*

Director, Policy and Evaluation

# Steps Supervisors Can Take to Prevent PPPs

*MSPB's research highlights core principles that can guide supervisors in preventing prohibited personnel practices.*

The 14 prohibited personnel practices (PPPs), codified at 5 U.S.C. § 2302, are a set of behaviors that agency officials are not permitted to engage in when they take (or fail to take) personnel actions. They include actions such as discrimination, manipulating recruitment actions to favor an individual, and retaliation against whistleblowers. As discussed in our report *Perceptions of Prohibited Personnel Practices: An Update*, perceptions of PPPs correlate with several negative outcomes, including decreases in employee engagement and increases in employees' intent to leave the organization. As part of our core mission, MSPB has conducted extensive research on the PPPs, and we have identified steps supervisors can take to not only prevent PPPs but also reduce misunderstandings that may lead to employee perceptions of PPPs. The most appropriate means to prevent PPPs or perceptions of PPPs will depend on precisely what is occurring and why. However, as shown in the following infographic, MSPB has identified some core principles that are applicable to a wide range of situations.



Many of these principles interact with each other to establish an organization's culture, particularly in how the organization supports (or does not support) ethical decision-making. Supervisors should model desired behaviors so others see what is expected. When making decisions, supervisors should be as transparent as legally possible and explain not only why they made the decisions but also how those decisions support organizational excellence. When possible, supervisors should involve employees in the decision-making process to gain their buy-in and to offer an additional check on the supervisor's decisions. Agencies should ensure that supervisors understand the PPPs and how to avoid

them, and leaders must set clear expectations for how they expect other supervisors in the organization to behave. Finally, supervisors should be held accountable for ensuring an ethical culture free of PPPs to protect employees.

To ensure that their actions are in line with these core principles, supervisors may benefit from conducting self-examinations by regularly asking themselves evaluative questions: Am I being clear on my ethical expectations? What steps have I taken to create a safe environment for employees to express their concerns? This deliberate pause is important because there is a difference between knowing that something matters and being mindful of it. Engaging in self-examination can move supervisors from the first category to the second, thereby increasing the chance they will engage in the desired behaviors, which in turn can prevent PPPs or misunderstandings about what management is doing.

There are definitive steps supervisors can take when a specific problem is occurring. For instance, our report explains that the PPP employees most consistently perceive is the manipulation of recruitment actions to favor an individual. One way to reduce this PPP—or misperceptions that it is occurring—may be the use of subject matter experts (SMEs) to design the recruitment announcement, develop the assessment plan, and apply the assessments.

As a more specific example, when hiring for a research analyst position, supervisors can task other analysts who are already in the work unit to collectively advise on what skills are needed, how those skills can be measured, and how to apply those measures when reviewing resumes. These SMEs can even serve on interview panels to identify the best candidates to refer to the selecting official. By empowering existing employees to provide this kind of input, the supervisor can demonstrate a commitment to merit-based hiring and transparency, use the collective wisdom of the group to further communality, and set clear expectations that hiring decisions will be free from prohibited actions.

These core principles of leading by example, transparency, empowerment, education, clarity, and accountability are not new, but our extensive research—which can be found in the published PPP reports on our website—demonstrates that they could be the key to ensuring that the Federal workplace is free of PPPs. ❖

## A Primer for Using Shared Certificates

On March 18, 2016, the Competitive Service Act of 2015 was enacted to allow agencies to share competitive certificates issued under delegated examining (DE) procedures to facilitate faster hiring and reduce applicant burden. To use shared certificates, agencies need to follow a set of procedures laid out in the Delegated Examining Operations Handbook and all applicable regulations. In short, the process involves the requirements shown below. More information is available from OPM’s Hiring Experience Group and the *Chief Human Capital Officers Implementing Policy Guidance and FAQs*. ❖

<p><b>General Requirements</b></p> <ul style="list-style-type: none"> <li>• An agency may share a competitive certificate issued under DE procedures with one or more agencies for a position that is in the same occupational series, grade level (or equivalent), full performance level, and duty location.</li> <li>• All selections must be made within 240 calendar days of the original certificate issue date.</li> <li>• Each agency must maintain case file documentation to reconstruct its own use of the certificate.</li> </ul>	
<p><b>Original Agency Requirements</b> (the agency sharing the certificate with another agency)</p> <ul style="list-style-type: none"> <li>• Provide notification in the job announcement.</li> <li>• Allow applicants to opt in to sharing their material.</li> <li>• Close out and audit the certificate before sharing.</li> <li>• Share all documentation pertaining to development of the certificate.</li> <li>• Safeguard personally identifiable information during transmission of certificate materials.</li> <li>• Redact the names of applicants who did not opt in and those selected.</li> <li>• Notify receiving agencies if errors are found in the original case.</li> </ul>	<p><b>Receiving Agency Requirements</b> (the agency receiving a certificate from another agency)</p> <ul style="list-style-type: none"> <li>• Verify, through job analysis, original agency qualification and evaluation criteria appropriate for position being filled.</li> <li>• Notify the shared list of candidates of its receipt of their application material and: <ul style="list-style-type: none"> <li>• Its intent to consider them for a position; and</li> <li>• The requirement to consider its own employees first.</li> </ul> </li> <li>• Provide notice of the opportunity to its own employees and others required to consider and allow up to 10 business days to apply.</li> <li>• Consider individuals under reemployment priority lists and career transition programs.</li> </ul>

Adapted from: Competitive Service Act Implementation, *OMB MAX*, May 2023.

# Making a Checklist for Employee Removal Notices

*To avoid unnecessary appeals, agencies can create a checklist that covers the necessary steps for employee removal notices.*

Federal regulations (5 C.F.R. § 1201.21) spell out what information an agency must provide to an employee when issuing a decision notice for a personnel action that is appealable to MSPB. This list includes informing the employee whether “the election of any applicable grievance procedure will result in waiver of the employee’s right to file an appeal with the Board.” The importance of complying with this regulation was made clear in a recent Board decision, *Kaszowski v. Air Force (2023 MSPB 15)*.

Ms. Kaszowski initially pursued a union-filed grievance of her removal, but the union unilaterally declined to pursue arbitration on her behalf. She then filed an appeal with MSPB. In the initial decision, the administrative judge (AJ) noted that an election of the union’s grievance process serves as waiver of an employee’s MSPB appeal rights because, under 5 U.S.C. § 7121(e)(1), an employee may challenge an adverse action by filing either a grievance under the negotiated grievance procedures or an MSPB appeal, but she cannot do both.

The appellant then filed a petition for review with the Board. In its subsequent decision, the Board noted that 5 C.F.R. § 1201.21 explicitly states that the agency must inform the employee of the consequences of selecting one of the routes for redress—namely, that it is a waiver of the other route. In Ms. Kaszowski’s case, the notice did state that the first method she selected would serve as an election to proceed under that method, but it did not state that she would forever lose the other option. Because this information was missing, her selection of the union grievance was not a knowing and informed election, and, therefore, MSPB jurisdiction was not waived. Accordingly, her appeal was remanded to the AJ for adjudication.

How can agencies avoid making mistakes like these? Common practices in technical occupations like pilots and surgeons suggest one option: checklists. No matter how experienced a person might be in their occupation, it is easy to forget small details in the process of doing so many things. Of course, a surgeon knows to wash their hands or make sure they are about to perform the correct procedure on the right patient. But many hospitals nevertheless have the surgical team go through a checklist to make sure that every step—no matter how mundane—has been done correctly.

In the case of 5 C.F.R. § 1201.21, the regulation is already shaped as a list. The points are too lengthy to enumerate here, but if you follow the link, you will see that the regulation includes a set of elements that must be provided to the employee. This makes it easy for any agency to use the exact language as a checklist, ticking off each piece to make sure they have included it in their notice. For agencies that use standardized language for all their notices, it may make sense to regularly check that language against the latest laws, regulations, and case decisions to ensure that the agency’s word choices are still fully compliant. As the saying goes, an ounce of prevention can be worth a pound of cure. ❖



## MSPB Research Available Online

Did you know that MSPB’s research is available online? If you click on the links below, you can find:

- **Official reports** issued to the President and Congress that go back to 1981 when we published our first report, on sexual harassment;
- **Research briefs** that update and build on prior MSPB research or address trending topics;
- **Issues of Merit** newsletters going back to the first issue in 1996; and
- **Merit Principles Survey** data sets from our most recent surveys, with methodologies, fact sheets, and data dictionaries.

# Stellar Performance Appraisals

*Using the STAR technique to present accomplishments at performance appraisal time.*

As Federal employees, we are accustomed to the annual ritual of performance appraisals. It is a time for reflection, introspection, and a fair evaluation of our accomplishments over the past year. However, many of us struggle with articulating our achievements in a manner that truly reflects our contributions. Therefore, as you approach this year's performance appraisal season, you should consider a proven strategy to help showcase your accomplishments effectively—the STAR technique. It can significantly improve the clarity with which you communicate your accomplishments and their impact.

**Summarize each accomplishment.** STAR is an acronym that stands for situation, task, action, and result. The STAR technique is a structured approach to answering questions and presenting information. It is often recommended to both hiring managers<sup>1</sup> and applicants<sup>2</sup> preparing for job interviews. It is also an excellent tool for summarizing your accomplishments before your appraisal. To get started, for each accomplishment, write down:

- *Situation:* Begin by setting the stage. Describe the context within which you performed a task or faced a challenge at work. Be specific but concise.
- *Task:* Explain the responsibility or issue you were assigned or encountered. What was the problem you needed to solve? Was it a routine task or something new?
- *Action:* Describe the steps you took to address the task or challenge. Highlight your initiative, leadership, problem-solving, and any other competencies you employed.
- *Result:* Present the outcome of your actions. Be sure to quantify the impact where possible. Did you save time, increase efficiency, improve customer satisfaction, or achieve a significant project milestone?

**STAR in your performance discussion.** STAR technique narratives are also useful when discussing these achievements with your supervisor. Your accomplishment summaries can help you articulate your achievements in a clear, concise, and compelling manner. Once you have the above written down:

- *Prepare:* Reflect on your work over the past year. Identify the key accomplishments you want to highlight. Make sure that you have a STAR narrative for each key accomplishment.
- *Practice:* Before your appraisal, practice with your STAR narratives. This will help you present your accomplishments smoothly and confidently. It will also give you a chance to refine your descriptions and make sure they are as clear and impactful as possible.
- *Present:* Then, during the appraisal discussion with your supervisor, use your STAR narratives to discuss your achievements. Be sure to tailor your descriptions to your audience. Remember, your supervisor might not be familiar with every project or task you have worked on. Provide enough context to make your narrative understandable but keep it brief and focused.

**Why STAR works.** The STAR technique allows you to demonstrate your competencies and contributions in a way that is both concrete and memorable. It lets you tell a story, which is far more engaging and impactful than a dry list of tasks and responsibilities. It also forces you to focus on outcomes and results, which are often the most important part of your performance from a supervisor's perspective.

The STAR technique can be a powerful tool in your self-assessment toolkit. It is an opportunity to shine, to show your supervisor the value you bring to your role, and to ensure that your accomplishments are recognized and rewarded. So, as performance appraisal time approaches, take time to reflect on your achievements using the STAR technique. You—and your supervisor—might be surprised at how much you have accomplished. ❖

<sup>1</sup> Fernandez, C. (2006). The behavioral event interview: Avoiding interviewing pitfalls when hiring. *Journal of Public Health Management and Practice: JPHMP*, 12, 590–593.

<sup>2</sup> White, P., Mickelson, S., & Brumm, T. (2005). Helping students become interview stars. *2005 Annual Conference Proceedings*, 10.685.1-10.685.7. <https://doi.org/10.18260/1-2--15486>