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TOP NEWS STORIES

ADMINISTRATION RELEASES REPORT ON NAVY YARD SHOOTING, RECOMMENDATIONS FOR SECURITY CLEARANCE PROCESS

Last week the Office of Management and Budget (OMB) [released its report](#) to the President on recommendations to improve the federal security clearance process that was mandated to be reviewed following last September's [Navy Yard shooting](#) that saw twelve employees killed.

The recommendations emphasize "applying the same suitability and security standards to contractors and Federal employees."

The report offered thirteen (13) recommendations which together aim to achieve three goals: 1) increase availability of critical information to improve decision making; 2) reduce inherent risk in current processes; and 3) improve enterprise operations.

The report recommends allowing investigators greater access to local and state criminal records, use of social media to facilitate implementation of continuous evaluation of potential insider threats, enhanced oversight of federal adjudicators and contract investigators, consistency in performance measures for investigation and adjudication, and an overall reduction in the number of security clearances offered.

The Suitability and Security Process Review [report](#) was carried out by the Suitability and Security Clearance Performance Accountability Council (PAC), which is chaired by OMB's Deputy Director for Management along with the Director of National Intelligence and the Director of the Office of Personnel Management. Representatives from the Departments of Defense, Homeland Security, and Justice, FBI, the National Archives and Records Administration's Information Security Oversight Office and National Security Council participated in the working group responsible for the report.

Further reading on the report is available from [Federal Times](#), [Federal News Radio](#), [NextGov](#), and [Government Executive](#).

REPORT OUTLINES DECLINE IN IRS WORKFORCE, CUSTOMER SERVICE AND ASSISTANCE CAPABILITIES

A data-heavy annual [report](#) released last week by the Internal Revenue Service (IRS) depicts an agency with a shrinking workforce and budget, and the results the organization has been able to deliver despite significant challenges.

"While we have limited resources, we will continue to look for ways to find savings and efficiencies wherever we can," IRS Commissioner John Koskinen states in the [2013 IRS Data Book](#).

The IRS [workforce](#) is smaller than it has been for over a decade, at 83,613 full time employees, while workloads and responsibilities of the agency have greatly expanded with the passage of new laws, such as the Affordable Care Act.

Despite the challenges, the IRS processed more than 240 million tax returns in 2013. A significant majority, 83 percent, of the 146 million individual tax returns filed were processed electronically. 90.7 million taxpayers received assistance on the IRS's toll-free help line or at walk-in facilities, and the agency's website had 456.2 million visitors.

To access the complete 2013 IRS Data Book, [click here](#).

10 PERCENT OF AGENCIES STILL USING WINDOWS XP AS MICROSOFT PREPARES TO DROP PRODUCT SUPPORT

After April 8 Microsoft will stop releasing updates for the Microsoft XP operating system.

Approximately ten (10) percent of the government's computer systems still run the XP operating system, according to [Nextgov](#), and those organizations will be left without Microsoft's free updates and customer service after that date.

Agencies and networks may be vulnerable to viruses and hacking attempts after the XP support deadline passes, although Microsoft is offering incentives to agencies to upgrade their computer systems, whether to an updated operating system or to the Office 365 cloud service.

Federal organizations that still utilize XP do so oftentimes because their systems are not compatible with newer systems and software packages.

Microsoft has said that it can continue supporting agencies that use XP after the April deadline for a variable fee. The company is also offering discounts on new products and upgrades, according to [Nextgov](#).

FROM THE HILL AGENCY APPROPRIATIONS HEARINGS ABOUND

Notice a flurry of activity among senior career and political officials at your agency in the past few weeks?

An annual spring tradition, lawmakers across the House and Senate appropriations committees and subcommittees are holding hearings on the [fiscal 2015 budget](#) and agency [funding requests](#).

Following a series of [hearings](#) with a broader, high-level focus following the release of the President's 2015 budget plans, departments, agencies, and subcomponents are now having their opportunities to make their case before congressional appropriators.

Slated to appear before the Senate's appropriations committees and subcommittees [this week](#) are senior officials from the Department of Veterans Affairs, Navy, Department of Agriculture (USDA), Food and Drug Administration (FDA), Department of Interior, Federal Communications Commission (FCC), the Federal Bureau of Investigation (FBI), and the U.S. Capitol Police.

Appearing before the House appropriations committees and subcommittees [this week](#) are senior officials from the Office of National Drug Control Policy, the U.S. Capitol Police, Department of Energy, Department of Agriculture and USDA sub-agencies, Transportation Security Administration (TSA), Department of Interior, FCC, FBI, Navy, Air Force, Army Corps of Engineers, Army, Federal Emergency Management Agency (FEMA), National Institutes of Health (NIH), Bureau of Reclamation, Administrative Office of the United States Courts, National Science Foundation, Environmental Protection Agency (EPA), and Department of Veterans Affairs.

MANAGER MATTERS

PROFESSIONAL LIABILITY INSURANCE: WHY YOU NEED IT

FEDS Professional Liability Insurance gives you the freedom to manage. For more articles like this one, read "Yesterday's Headlines, Today's Coverage" in the bottom left corner on the [FEDS homepage](#).

Each year, managers in the federal government are under pressure to squeeze increasing efficiency and performance out of what seems to be an ever-shrinking workforce and budget. In this environment, one of the best ways for you as a federal manager to give yourself the peace of mind necessary to carry out your duties is to purchase a professional liability insurance (PLI) policy.

For a low annual premium (as little as \$145 a year after agency reimbursement), managers and supervisors can feel secure in their future, knowing that they have legal protections in the event of a catastrophic civil lawsuit or administrative action. Although professional liability insurance (PLI) is important for all federal employees, for federal managers and supervisors it is a necessity. In today's political climate, federal managers are exposed to complaints and actions by employees, fellow managers, members of the public, special interest groups and sometimes even politically motivated officials. With agency budgets under enormous pressure and public scrutiny of federal employees at an all-time high, any misstep real or imagined can result in serious disciplinary and financial consequences. The huge exposure that federal managers have to civil, administrative, and criminal liability is the main reason why Congress has mandated the agency reimbursement for all managers and supervisors—it is a clear sign that government officials consider the jobs of federal managers to be “high-risk” in terms of professional liability.

All PLI policies will provide the policy holder with three distinct types of protection: administrative, civil, and criminal. Administrative complaints brought upon by subordinate employees, co-workers, members of the public or some other entity often lead to EEO, OIG, OPR, OSC, Congressional or other management directed investigations and/or proposed disciplinary actions requiring the need to defend yourself. Assuming these matters will be automatically dismissed or defended against by your agency would be a mistake. Federal executives and managers are most at risk for administrative and disciplinary matters. These actions (which include EEO complaints, management investigations, OIG/OSC investigations, and whistleblower or ethics complaints, among others) are unfortunately becoming more and more prevalent in the federal workforce. Whether it is a misunderstood directive, an employee unhappy with being passed over for a promotion, or the seemingly ubiquitous “problem employee,” the impetus for an EEO complaint can be ever-present in the workplace. For a federal manager, oftentimes facing EEO complaints and investigations is simply the “cost of doing business” and performing your job. In these situations, having a professional liability insurance policy will provide you with an attorney to prepare you for the agency administration or investigative process, attend the investigative interview with you, and defend you against any resulting disciplinary action, from the agency level all the way up to the MSPB.

Federal managers are also vulnerable, albeit to a lesser degree, to civil lawsuits filed against them. These suits are typically referred to as *Bivens* Actions, Constitutional Torts or Personal Capacity Lawsuits. All federal employees can be sued personally by private persons or other entities for alleged violations of an individual's constitutional and common law rights. To understand civil exposures, you need to understand these three things: (1) You can be sued, (2) DOJ can deny representation, and (3) you can be liable for a judgment whether or not DOJ defends - and - if DOJ or your personal attorney loses and the government denies indemnification, you are liable for the judgment of damages. In the event of a personal capacity lawsuit filed against you, your

professional liability insurance company will provide you with an attorney to defend yourself, as well as (depending on which PLI carrier you choose) indemnity protection to help prevent devastating financial losses.

While criminal charges against you are not as likely as administrative allegations, a PLI policy still provides legal representation in this area. Should you face any criminal charges resulting from you performing your duties as a federal law enforcement officer, your PLI provider would make sure you have a legal representative to provide an effective defense.

For a manager or supervisor in the federal government, a professional liability insurance policy is a “must have” tool to defend your career, reputation, and financial security. Given the Congressional mandate for agency reimbursement, it is clear that those in the government consider PLI a necessity for federal managers.

While this article has concentrated on outlining the benefits and wisdom of having a PLI policy in general, next month’s [Manager Matters](#) column will focus on which PLI policy will best suit your needs.

For more information on your specific exposures now, how professional liability insurance protects, or how the FEDS program differs from other insurance programs, please visit the [FEDS website](#) and choose the [Executive and Managers](#) tab. For more articles like this one, read "Yesterday's Headlines, Today's Coverage" in the bottom left corner on the [FEDS homepage](#).

CAREER TIP OF THE WEEK

BE READY TO STAND-OUT IN AN INTERVIEW

Employers are looking for stand-out interview candidates in the interview process. Candidates who bring new ideas to the table and address problems with creativity and confidence. The individual who answers an interview question with a cliché fails on for originality and is classified by the interviewer as status quo. If asked what’s your greatest weakness and your response is that you don’t have any or you turn your weakness into strengths without provide a short story on “HOW” then you are considered as status quo. You cannot risk being status quo. You must prepare for all interview questions and stand-out in this job market. You cannot risk throwing away any interview question.

Below are a few distinctive interview questions that are distinctive and allow you to really stand-out with a unique and power response.

1. Why do you think you fit within our company culture or federal agency?

This question is asked to see how well they have researched the interworking of the employer. A good office culture is the second highest priority for most job seekers, second only to salary. Be sure to review the company’s or federal agency’s mission statement and review their current projects or goals.

A candidate may be surprised when you ask this question, but a valid answer shows they’ve done their research, and further that they are interested in your company for more than just a paycheck. They’re interested in the lifestyle and culture of your workplace.

2. What did you learn from your most impactful professional failure?

Most interviewers ask candidates to expound upon their most impactful professional accomplishment. Hence; most job candidates are not prepared to respond to the crucial question regarding their failures. Most successful people turn their failures into lessons learned and don't repeat them. However, some may hedge around the question, or give an example of a minor slip-up. This question could be an excellent opportunity to provide a "Stand-Out" answer.

An honest candidate will not be afraid to tell you exactly what went wrong and the valuable lesson they took from it. Candidates should be very specific and tell a short story about the failure and how they turned this lesson around. Everyone makes mistakes, but those who learn from those mistakes experience professional and personal growth at an exponentially faster rate.

A candidate who demonstrates knowledge of the company and industry will be a stand-out. Hiring managers interview multiple candidates for a position, but the individual who demonstrates a level of expertise and passion and who stand-out are likely to be productive immediately without suffering from a learning curve — a rare quality!

*Barbara Adams is the President and CEO of [CareerPro Global, Inc. \(CPG\)](#). She has been on the leading edge of SES application development for decades. Committed to providing world-class service, she has also built an SES writing team that has assisted more than 2,500 clients develop their application materials. Ms. Adams has been featured on T.V. and the radio, and as a presenter at numerous career conferences. CPG recently sent a team to instruct senior officials at Warner Robins Air Force Base, Georgia in best practices for developing their SES application materials. She is the co-author of the new book, *Roadmap to the Senior Executive Service: How to Find SES Jobs, Determine Your Qualifications, and Develop Your SES Application*.*

CASE LAW UPDATE

MSPB AWARDS ANNUITY TO DOI EMPLOYEE WHO REACHED DSR STATUTORY COMPUTATION REQUIREMENTS THROUGH TERM APPOINTMENT GRANTED BY SETTLEMENT AGREEMENT

A Department of Interior ("DOI") employee was removed from his position in November of 2004 for unacceptable performance. The employee appealed his removal to the Merit Systems Protection Board ("MSPB") but the DOI and the employee entered into a settlement agreement before an initial decision was reached. That settlement agreement provided that the employee would be "converted...to a four (4) year term appointment...as a Biologist (or other agreed upon position) beginning on January 12, 2005" and ending on January 12, 2009. The stated intent of this settlement provision was to provide the employee adequate time under current Office of Personnel Management regulations to receive a discontinued service ("DSR") annuity. At the expiration of the four-year term, the agency extended the employee's job for one additional year. In February 2010, the DOI cited the expiration of the employee's term and separated the employee from service. However, OPM denied the employee's application (in both an initial and reconsideration decision) for a DSR annuity after his separation, concluding that the settlement agreement "was an artifice designed to evade the statutory DSR requirements." The employee appealed OPM's reconsideration decision to the MSPB, and an administrative judge issued an initial decision reversing OPM's determination. On March 21, 2014, the Board affirmed the administrative judge's decision.

The Board cited *5 USC § 8414(b)* to state that an employee who is covered by the Federal Employees' Retirement System ("FERS") and is separated from service involuntarily, "except by removal for cause on

charges of misconduct or delinquency...after completing 25 years of service, or after becoming 50 years of age and completing 20 years of service, is entitled to an annuity.” DSR annuities require that the separation be “involuntary,” but OPM’s regulations do not define that term. The Board looked instead to OPM’s Civil Service Retirement System (“CSRS”) and FERS Handbook for guidance as to when a separation is involuntary for purposes of a DSR annuity. OPM’s Handbook § 44A1.1-2A gives examples of when a separation is involuntary which includes a removal based upon unacceptable performance.

Although OPM has no discretion to determine whether an individual is entitled to an annuity if the employee meets the statutory requirements for one, the Board recognized in *Parker v. Office of Personnel Management*, 93 M.S.P.R. 529 (2003), that OPM “has the authority to determine whether any separation date established by a settlement agreement is an artifice designed to evade the statutory requirements for entitlement to an annuity.” In *Parker*, OPM was not bound by the consequences of the settlement agreement to grant an annuity because the agreement created documents which simply gave the appearance that the employee had been appointed to a civilian position at a time far earlier than he had been in reality. This gave that employee the service necessary to receive an annuity.

The Board distinguished the present case from *Parker*, which they stated “only created the impression of an employee’s right to receive a retirement annuity on paper.” In this case, the Board observed that the employee’s settlement agreement returned the appellant to actual work: he was employed with his employing agency, actually (rather than constructively) serving five years. Therefore, the Board concluded that the employment arrangement was not merely an “evasive device designed to allow the appellant to qualify retirement benefits for which he would otherwise have been ineligible.” The purpose of the settlement agreement was to aid the employee in eventually qualifying for a DSR annuity, but that intent alone does not invalidate his eligibility, the Board surmised. Because the settlement agreement returned the employee to actual work, the five years spent at the term position qualified him for a DSR annuity under the computation formula. And because OPM has no discretion to deviate from the computation formulas, the Board stated that it “cannot deny the employee an annuity based on its subjective determination that the employee’s federal service fails to qualify him for an annuity when he otherwise objectively satisfies the statutory annuity formula.”

OPM’s second argument was that the employee was not involuntarily separated from employment in February 2010, at the end of his four-year term plus one additional year of service. OPM argued that the employee voluntarily accepted a term position which he knew was limited in duration when he signed the settlement agreement. The Board disagreed, citing *Miller v. Department of Homeland Security*, 111 M.S.P.R. 325 (2009), which held that the “hallmark of a voluntary separation from employment” is whether the employee initiated the separation. Tracing the employee’s separation back to its inception, the Board found that the employee was separated based upon the expiration of his term appointment at the agency’s initiative. The extension of the term for an additional year, the Board added, just demonstrated that the decision to separate the employee (or extend him) rested wholly with the agency.

In support of its argument, OPM cited to a section of its Handbook which states that “a separation is not qualifying for discontinued service retirement if the employee voluntarily leaves regular long-term (career) employment to accept a short-term employment with full knowledge of its earlier termination.” Although the employee did “leave” regular long-term (career) employment when he was removed to be subsequently employed on a short-term basis, and had knowledge that the subsequent employment was a term position, the Board noted that he did not “leave” regular employment voluntarily. Rather, he only left because he was

separated for unacceptable performance. And the Board found support for their position in OPM's Handbook § 44A2.1-8B, which states that "in certain situations, terminations from short-term employment may be considered involuntary for discontinued service retirement. This would be the case if the appointment immediately followed an involuntary separation."

For the above stated reasons, the Merit Systems Protection Board affirmed the administrative judge's reversal of OPM's reconsideration decision, did not sustain OPM's final determination denying the employee a DSR annuity, and ordered OPM to award the employee a DSR annuity no later than 20 days after the date of the decision.

[You can read the full case, *Eller v. Office of Personnel Management*, here.](#)

This case law update was written by [Conor D. Dirks](#), associate attorney, [Shaw Bransford & Roth, PC](#).

For thirty years, Shaw Bransford & Roth P.C. has provided superior representation on a wide range of private sector and federal employment law issues, from representing federal employees nationwide in administrative investigations, disciplinary and performance actions, and Bivens lawsuits, to handling security clearance adjudications and employment discrimination cases.

GEICO'S GOOD STUFF GSA LAUNCHES DIGITAL GOVERNMENT STARTUP, 18F

GEICO's Good Stuff is a column series highlighting great stuff happening in the federal community.

Last week the General Services Administration (GSA) announced the creation of [18F](#), a new unit of GSA focused on the digital delivery of services to agencies and the American public.

18F is modeled on the concept of small [technology startups](#), and will house GSA's new digital delivery team and programs such as that for Presidential Innovation Fellows (PIFs).

The new office will work on a [fee-for-service model](#), with agencies able to reimburse 18F for assistance on a wide range of services.

According to a post on [18F's blog](#), the office will:

- Partner with agencies to deliver high quality in-house digital services using agile methodologies pioneered by top technology startups.
- Rapidly deploy working prototypes using [Lean Startup principles](#) to get a desired product into a customer's hands faster.
- Offer digital tools and services that result in government-wide reuse and savings, allowing agencies to reinvest in their core missions.
- We're transparent about our work, develop [in the open](#), and commit to continuous improvement.

"The mission of 18F is to make the government's digital services simple, effective, and easier to use for the American people. This service delivery program will make GSA the home of the government's digital incubator. By using lessons from our Nation's top technology startups, these public service innovators will be able to provide cutting-edge support for our federal partners that reduces cost and improves service," [said](#) GSA Administrator Dan Tangherlini.

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HEARD INSIDE THE BELTWAY

When I want to communicate with a foreign leader privately, I would type or write the letter myself, put it in the post office and mail it.

Former President Jimmy Carter describing his [system](#) for eluding National Security Agency (NSA) monitoring of communications with foreign leaders

Any use of marijuana is illegal under federal law, regardless of state law. As a federal employee, yes you must comply with federal law or suffer job consequences.

Debra Roth, attorney, Shaw Bransford & Roth, in Federal Times [Ask the Lawyer column](#), “No ‘high times’ for federal employees”

WEEKLY LEADERSHIP REFLECTION

You can't let praise or criticism get to you. It's a weakness to get caught up in either one.

John Wooden