



MAY 28, 2014
TOP NEWS STORIES

OPM MEMO – UPDATES ON HUMAN CAPITAL PLANNING, REVIEWS, REPORTING

Changes to federal human resources planning, reviews, and reporting, have been taking place over the past several years, with more to come in the near future.

Office of Personnel Management (OPM) Director Katherine Archuleta outlined the status of several initiatives being led by agency Chief Human Capital Officers (CHCOs) through the CHCO Council in a [memorandum](#).

“The objectives for revising our human capital planning, management review, and reporting processes are to develop and implement workforce strategies that advance progress on each agency’s mission performance goals and objectives, while streamlining core human resource (HR) policies, procedures, and technology. Agencies should focus their HR operations on supporting managers and employees in hiring, engaging, and retaining top talent, while reducing the time and costs associated with HR processes and reporting,” Archuleta said in the memo.

Archuleta provided an update on the Human Capital Assessment and Accountability Framework (HCAAF), now referred to as the Human Capital Framework (HCF). She indicated that OPM will soon propose changes to 5 CFR part 250 related to strategic human capital planning and implementation, and that agencies would have an opportunity to provide comments on the proposed regulation.

Also to be included in the proposed regulations around 5 CFR part 250 will be language “to integrate agencies’ strategic human capital plans within their strategic and annual performance plans,” consistent with the GPRA Modernization Act of 2010 (GPRAMA). OPM will also propose elimination of reports by agencies on their strategic human capital plans.

In adherence with GPRAMA, OPM is continuing to pilot and expand the use of quarterly data-driven reviews in “HRstat” sessions which bring together the agency CHCO, Chief Operating Officer (COO), and Performance Improvement Officer (PIO) to assess agency progress against goals and targets set in strategic plans. OPM and the CHCO Council “will develop internal benchmarks of HRstat metrics to identify key strategic and operational HR metrics all agencies will collect and share,” according to Archuleta.

To access the full OPM memo, which provides details on reports OPM has slated for elimination, [click here](#).

BETTER MANAGEMENT OF SOFTWARE LICENSES NEEDED FOR COST SAVINGS, GAO REPORTS

A newly published [report](#) by the Government Accountability Office (GAO) found that the “vast majority of agencies...reviewed do not have adequate policies for managing software licenses.”

Agencies may be missing out on significant cost savings opportunities as a result of inadequacies in this area, GAO said.

For example, the Department of Homeland Security (DHS) reported savings of \$125 million between 2010 and 2012 on Adobe licenses and another \$181 million in 2012 alone by negotiating ten enterprise software agreements.

GAO found that only two major agencies had comprehensive license management policies which included clear roles and central oversight authority for managing enterprise software license agreements. Another eighteen agencies had policies that were not comprehensive, and four agencies had not developed any policies.

“The weaknesses in agencies' policies were due, in part, to the lack of a priority for establishing software license management practices and a lack of direction from OMB. Without an OMB directive and comprehensive policies, it will be difficult for the agencies to consistently and effectively manage software licenses,” GAO stated.

GAO recommended the Office of Management and Budget (OMB) issue a directive to guide agencies in managing licenses. OMB [disagreed](#) with the need for a directive, saying new management tools, such as PortfolioStat sessions, provided agencies with sufficient tools to manage their information technology (IT) portfolios.

To access the GAO report (GAO-14-413) Federal Software Licenses: Better Management Needed to Achieve Significant Savings Government-wide, [click here](#).

SENATE BILL TO ENHANCE DHS CYBER PERSONNEL AUTHORITIES ADVANCES

The Senate Homeland Security and Governmental Affairs Committee (HSGAC) reported legislation last week that would provide the Department of Homeland Security (DHS) with hiring and compensation authorizes for cybersecurity experts similar to those already available to the Defense Department (DOD) and National Security Agency (NSA).

The DHS Cybersecurity Workforce Recruitment and Retention Act of 2014 ([S. 2354](#)) was [introduced](#) by the HSGAC Chairman Tom Carper (D-DE).

“Unfortunately, the demand for cybersecurity experts in the government greatly outpaces the supply and many agencies have had difficulty attracting the best and brightest and retaining those already in service. This legislation would help address this problem by giving the Secretary of Homeland Security the personnel authorities the Department needs to improve their ability to compete with the private sector and other agencies to hire and retain the most skilled cyber workforce,” Sen. Carper said upon introduction of the legislation.

The legislation, if approved, would allow DHS to hire cyber experts at the same speed and with comparable salaries to the Defense Department. It also requires DHS to report annually on the program to allow oversight and assessment of the effectiveness of the recruitment and retention program.

The committee also approved an amendment to the bill by Sen. Rob Portman (R-OH) that would require DHS to implement the [National Cybersecurity Workforce Framework](#). That framework would “provide a common lexicon for cybersecurity work, a uniform classification system for job functions, and specific employment codes,” [according](#) to the committee.

Rep. Michael McCaul (R-TX), chairman of the House Homeland Security Committee, introduced legislation last year that includes similar provisions as contained in S. 2354 to enhance DHS' cyber workforce.

A one page fact sheet on the legislation, S. 2354, can be [accessed here](#).

FROM THE HILL

CONGRESS TARGETS SENIOR EXECUTIVES, CIVIL SERVICE PROTECTIONS AS VA SCANDAL INTENSIFIES

The scandal surrounding the Department of Veterans Affairs (VA) have evolved from a low boil into a raging cauldron in recent months, fueled by media-reported whistleblower claims of mismanagement, backlogged claims and preventable patient deaths, and calls for [accountability](#) by Congress and veteran service organizations.

Congress is now rushing to pass legislation, with many bills completely bypassing the committee process, while calling for heads to roll at the VA.

Last week the House passed legislation ([H.R. 4031](#)) with a significant bipartisan majority that would allow the VA Secretary to fire career Senior Executives with no due process. Sen. John McCain (R-AZ) said that he may introduce legislation expanding the firing authority to cover all federal employees.

An attempt to pass the House bill without debate on a unanimous consent motion, raised by Sen. Marco Rubio (R-FL), the sponsor of the Senate companion ([S. 2013](#)), was denied by Sen. Bernie Sanders (I-VT), chairman of the Senate Veterans Affairs Committee. Sanders has announced he will be introducing comprehensive accountability and reform legislation, and that investigations being conducted by the VA's inspector general should be completed prior to congressional action.

Senate appropriators included language in a VA appropriations bill to ban performance awards for Senior Executives and employees of the Veterans Health Administration (VHA). Bans on SES performance awards have also been included in other pieces of legislation.

More hearings are being scheduled and legislative proposals being drafted and pushed through the legislative process, and FEDmanager will continue tracking this story as it continues to develop.

CAREER TIP OF THE WEEK

THE OFFICE OF PERSONNEL MANAGEMENT WANTS YOUR ECQS TO PASS

I know, I know. Many people would disagree with the title of this article.

“They ate my ECQs for lunch,” they’d say.

or...

“They make it so difficult because they don’t want anyone to pass. It’s virtually impossible!”

I would argue that even if the Office of Personnel Management (OPM) doesn’t realize it, OPM has given you a number of parameters that a) make it easier for you to provide the kinds of impactful career stories it wants, and b) make it easier for OPM to find what it’s looking for in your ECQs.

Consider these:

The 10-year rule: If an example happened more than 10 years ago, don’t bother. The board won’t like it.

The Challenge-Context-Actions-Results (CCAR) format: Some people, such as those in the Public Affairs community, like to write starting with the “bottom line” up front. OPM wants your stories told in a logical format on the page, using Challenge-Context-Actions-Results.

Executive Essays, not project management descriptions: It is easy to simply share detailed and overly technical write-ups of projects, but that’s not what OPM is looking for. OPM wants specific career stories, yes, but ones that are impactful and executive in scope. That means you are dealing with senior officials, crossing organizational lines, and creating results that have widespread and long-term strategic impact on customers and stakeholders. It’s best to keep the reader in mind, and assume (rightly so) that they don’t share your background. In other words, you must express your stories in a way that any executive can understand and appreciate.

Two pages per ECQ: Check each vacancy, because there is sometimes a little bit of a restriction on length or character count, but for the most part, OPM gives you a two-page limit per ECQ. That’s good, because without this parameter, some people would write a single paragraph and other would write eight pages!

Two examples per ECQ: This is not a requirement, but a strongly recommended best practice. The boards would always rather see two examples per ECQ instead of just one.

Use the competencies as your guide: Before you write your ECQs, you should outline your potential topics and then compare them to the competencies for each ECQ. And then ask yourself, “Will I be able to address most, if not all, of these competencies effectively in my write-up?” If the answer is yes, you are probably on the right track. However, if the answer is no, or if it is unclear, then your topic is probably not a good fit for that particular ECQ. The boards will absolutely be looking for the competencies in your ECQs.

Finally, I would argue that it shouldn’t necessarily be easy to get your ECQs approved by OPM. Don’t we only want highly motivated and dedicated people in these important Senior Executive Service positions? Don’t we want people who can write relatively short essays on five broad categories about their careers? Doesn’t seem like too much to ask. Considering the influence SESers have, and the important leadership oversight role they play, I say if the application process “weeds out” the faint of heart, then so be it.

If you provide impactful career stories that are executive in scope and make sure you follow these “parameters,” your chances of being approved will increase dramatically. And since OPM is the one providing these parameters, doesn’t it make sense that they actually *want* your ECQs to pass?

Lee Kelley is an Iraq war veteran and former Army Captain who now serves as the senior writer on CareerPro Global’s writing team. Leveraging the company’s vast expertise in assisting thousands of SES and federal job seekers, Lee has personally developed hundreds of resumes and more than a thousand ECQs. He is also the Director of Training and Veteran Transitions, and has provided USAJOBS resume-writing workshops to hundreds of federal employees and our military. In addition, Lee is an author and executive coach. He co-authored the book Roadmap to the Senior Executive Service: How to Find SES Jobs, Determine Your Qualifications, and Develop Your SES Application. His latest book is titled, Inside Marine One: Four U.S. Presidents, One Proud Marine, and the World’s Most Amazing Helicopter.

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MANAGER MATTERS

CHALLENGES FOR FEDERAL MANAGERS INCREASE

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](#).

Today's environment in the federal government requires managers to be more adaptable than ever, as budgetary pressures combine with increased oversight and rapid technological change produce a myriad of challenges. In recent weeks, three developments have caught our eye.

- At a Partnership for Public Service town hall on May 8, Office of Personnel Management (OPM) director Katherine Archuleta announced that her agency is finalizing regulations on phased retirement, and that the regulations should be released soon. Under phased retirement, employees who are eligible for retirement would, with the agency's consent, be allowed to work half-time while getting a proportionate amount of their pension, with full retirement benefits recalculated at the end of their service taking into account the time spent working part-time. Once the regulations are issued and the phased retirement plans go into full effect, federal managers will be faced with the task of integrating these employees into the office. Beyond the burden of seamlessly spreading work between part-time employees that would otherwise be done by full-time staff, managers will also be forced to deal with the disruption among personnel that this may cause. As many of you have experienced, the expansion of telework in the office can often lead to disputes, petty jealousies, and hostility among staff. These problems could rear their head in offices with large phased retirement participation. If these problems would develop in your office, having a professional liability insurance policy would aid immeasurably in reducing your exposure. With FEDS PLI, complaints about unfairness or discrimination against you would be covered, and you would have an attorney by your side to defend against such allegations.
- A recent report by the Senior Executives Association (SEA) revealed that half of senior managers believe that overall morale in the federal government is "low" or "very low." In addition, two-thirds of those surveyed reported that 2013 was not as good of a year for federal employees as 2012. In respondents' comments, the most common complaints were centered on pay, as managers believed that low pay was responsible both for declining morale as well as low retention rates. All federal managers, to be sure, are familiar with these problems. A marked decline in morale can lead to a host of problems for managers, as employees' production suffers and some productive employees decide to depart for the private sector. Low morale can also lead to an increase in complaints by employees, both against each other and against management. With allegations on the rise, having a professional liability insurance policy has become a necessity for managers in the federal government. The FEDS PLI policy provides for top-notch legal defense in the event of a complaint, allegation, or OIG or OSC investigation in which you are the subject.
- The Equal Employment Opportunity Commission (EEOC) released its 2014 training course schedule. Among the courses listed is "EEO and HR for Managers & Supervisors," which is offered jointly by both the EEOC and the OPM. The course should prove to be an effective tool for federal managers in learning how to better handle problem employees and EEO complaints in a manner that does not negatively affect your performance or your office's cohesion and morale. As EEO complaints are one of the most frequent challenges that managers face, they are perhaps the strongest reason for managers to invest in a FEDS policy. In the event of an EEO complaint, as a FEDS policyholder you are entitled to up to \$200,000 in legal costs to protect against such matters.

This month's Manager Matters items stress the continued challenges that federal managers face. In the federal government today, obstacles lurk around every corner. For federal managers, FEDS is your protection. A FEDS policy gives you the necessary peace of mind to perform your job, knowing that your civil, administrative, and criminal liabilities are covered. Call 866.955.FEDS or visit www.fedsprotection.com today to enroll or to learn more.

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](#).

CASE LAW UPDATE

DENIAL OF U.S. ARMY CORPS OF ENGINEERS FURLOUGH APPEAL VACATED BY MSPB

A U.S. Army Corps of Engineers ("USACE") employee was furloughed for six days from his Construction Control position, and appealed to the Merit Systems Protection Board. The employee argued that the agency should have excepted him from the furlough because the agency's policy during the furlough was to exempt personnel whose labor costs were completely from Civil Works or Intelligence Community funding sources, and that the entirety of his labor costs during the period in question were indeed from Civil Works or Intelligence Community projects. The MSPB administrative judge consolidated the employee's appeal with a number of other appeals, and based on the written record (the employees did not request a hearing) the administrative judge affirmed the furlough action, holding that the agency had demonstrated that the furlough promoted the efficiency of the service by showing that it was a reasonable management solution to the financial restrictions placed on it and had been applied in a fair and even manner. The employee petitioned the full Board for review of the administrative judge's decision, separate from the rest of the consolidated appellants, and on May 23, 2014, the Board vacated the administrative judge's initial decision.

The employee asserted, on appeal before the Board, that although his Unit Identification Code found in his Standard Form 50 ("SF-50") was a Military Functions code, from April 2008 to October 2012, he worked entirely on a Washington Aqueduct project that was a Civil Works project, and funded completely with non-Department of Defense ("DoD") funds. He also asserted that from October 12 to the present, the labor costs of his current project have been funded completely by National Intelligence Program funds. The employee also provided decision notices indicating that the agency had rescinded the proposed furloughs of five other employees after it was determined that the labor costs of those employees were funded solely with National Intelligence Program resources. For those reasons, the employee argued that the furlough action did not promote the efficiency of the service.

Because an initial decision "must identify all material issues of fact and law" and because the administrative judge did not address the employee's argument that the furlough was improper because of the source of the funding of his work, the Board addressed the issue on appeal.

The Board observed, via a declaration by the Deputy Director of Resource Management for USACE, that one of the categorical exceptions to the furlough of DoD employees was any employee not paid by accounts in the DoD-Military budget. This exception, noted the Board, sprang forth in part from a USACE request to the Department of the Army headquarters, that all USACE Civil Works employees be excepted from the furloughs due to a more sufficient level of Civil Works funding outside of DoD-military appropriations.

The Board found that USACE installations were instructed to conduct an annual review of army management structure codes, which indicate the nature of the preponderance of the work an employee performs (national defense, DoD-military, Civil Works, among others), and that the Commander of the Baltimore Engineer District, North Atlantic Division of the USACE indicated he specifically directed his personnel from Resource Management and Human Resources to identify employees potentially eligible for the Civil Works exception in their months before the anticipated furlough. The Board found, based on witness testimony, that employees who billed or charged labor hours to projects funded with military appropriation within the four fiscal quarters before the furlough were determined to be subjected to the furlough, and all others were to receive the Civil Works exemption. Similarly, the Board found that if an employee had charged 100 percent of his time to Civil Works but had, for some reason, a military code, that code should have been changed to Civil Works.

The Board cited 5 U.S.C. §§ 7512(5) and 7513(a) for the rule that an agency may furlough an employee for 30 days or less “only for such cause as will promote the efficiency of the service.” The Board articulated that this standard is met when an agency can show that the furlough “was a reasonable management solution to the financial restrictions placed on it and that the agency applied its determination as to which employees to furlough in a fair and even manner.” However, the Board points out that before it can reach the issue of whether an action promotes the efficiency of the service, an agency must first establish that there is “cause.” The Board cites the definition of “cause” under 5 U.S.C. § 7513(a) as generally connoting some specific act or omission on the part of the employee that warrants disciplinary action. Because furloughs are taken for nondisciplinary reasons, and are not “personal” to the affected employee, the definition of “cause” in furlough actions must be defined differently. The Board redefined cause, in this case, as encompassing “whether the appellant met the criteria established by the agency for being subject to, and not excepted from, the furlough.”

Because the record was unclear as to whether the agency determined that the employee met the criteria established by the agency, the Board found that it was also unclear whether the Agency had demonstrated “cause” for subjecting the employee to the furlough.

For the above stated reasons, and because “the parties did not adequately present evidence and argument” relating to whether the agency demonstrated “cause,” the dispositive issue, the Board vacated the initial decision and remanded the appeal for further adjudication consistent with their opinion.

[You can read the full case, *Dye v. Department of the Army*, 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 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 COORDINATED INTERNATIONAL EFFORT RESULTS IN BLACKSHADES MALWARE TAKEDOWN

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

Last week the Federal Bureau of Investigation (FBI), along with domestic and international law enforcement partners, [announced](#) nearly one hundred arrests around the world related to computer malware known as Blackshades.

An indictment was unsealed in the Southern District of New York against Swedish national Alex Yucel and a guilty plea of U.S. citizen Michael Hogue, both of whom the FBI believed co-developed the computer malware known as Blackshades. [Other indictments](#) against additional defendants were also unveiled, as well.

The malware empowers criminals to steal passwords and banking credentials, allowing them to hack and access accounts of infected computers. The software had been sold and distributed to cyber criminals across the globe, resulting in law enforcement operations in eighteen (18) countries, and the U.S., and leading to over ninety (90) [arrests](#) and over 300 searches.

Manhattan U.S. Attorney Preet Bharara [said](#), “Blackshades’ flagship product was a sophisticated program known as the remote access tool, or RAT for short. The RAT is inexpensive and simple to use, but its capabilities are sophisticated and its invasiveness breathtaking. As today’s case makes clear, we now live in a world where,

for just \$40, a cybercriminal halfway across the globe can—with just a click of a mouse—unleash a RAT that can spread a computer plague not only on someone’s property but also on their privacy and most personal spaces.”

The FBI led much of the [investigative work](#) on the case, with significant international law enforcement assistance provided by partner organizations, as well as the Department of Justice’s Office of International Affairs and Computer Crime and Intellectual Property Section.

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HEARD INSIDE THE BELTWAY

All of us in this body need to be for accountability. None of us in this body, however, ought to be for turning a civil service system into a patronage system...The test of a society is whether, at times of stress, it can follow due process and the law.

House Minority Whip Steny Hoyer (D-MD) [speaking](#) against a bill that would allow the Veterans Affairs Secretary to fire career Senior Executives with no due process

WEEKLY LEADERSHIP REFLECTION

I am a firm believer in the people. If given the truth, they can be depended upon to meet any national crisis. The great point is to bring them the real facts.

Abraham Lincoln