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# The Bargaining Unit Blotter

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Policing Region 6 Management since 1997

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August 22, 2014

## Prohibited Personnel Practices Reminder

As EPA and Region 6 experience significant changes due to cuts in our budget and FTEs, including the early retirements and buyouts this spring (VERA/VSIP) and the regional realignment, it is important to be aware of and watchful for Prohibited Personnel Practices.

Every employee is required to comply with these provisions of federal labor law (5 USC 2302), which are intended to protect the Merit Systems Principles found in 5 USC 2301.

### Summary of Prohibited Personnel Practices:

- A. Discrimination on the basis of race, color, religion, sex, age, handicapping condition, marital status, political affiliation or national origin.
- B. Solicitation or consideration of a recommendation or negative statement not based on an applicant's performance or character.
- C. Coercive political activity.
- D. Willful obstruction of any person's right to compete for employment and/or advancement.
- E. Influencing someone to withdraw from competition.
- F. Granting any advantage not authorized by law, rule, or regulation to any candidate.
- G. Selecting, promoting or advocating for a relative. (nepotism)
- H. Taking or failing to take a personnel action because of any disclosure of a violation of the law or gross mismanagement, waste, abuse of authority or danger to the public.
- I. Taking, or failing to take, a personnel action because an applicant has filed a Grievance, testified regarding Grievance, cooperated with an Inspector General or Special Counsel Investigation, or refused to obey an order that would require the person to violate the law. (retaliation)
- J. Discrimination on the basis of conduct which does not affect the person's work.
- K. Violation of veteran's preference requirement.
- L. Violation of laws and regulations related to the Merit System Principles.

Prohibited Personnel Practices may be enforced through several mechanisms; however, employees may typically choose one only one of these:

- Grievance under Article 8 of the AFGE/EPA Master Collective Bargaining Agreement
- Complaint submitted to the Office of Special Counsel
- Complaint submitted to the Equal Employment Opportunity Commission
- Complaint submitted to the Merit Systems Protection Board

### REFERENCE

From the *Master Collective Bargaining Agreement* between AFGE and EPA.

**Article 8 Employee Rights: Section 5: Prohibited Personnel Practices.** The following personnel practices are prohibited as described in 5 U.S.C. 2302:

- A. Discriminate for or against any employee or applicant for employment on the basis of race, color, religion, sex, age, handicapping condition, marital status, political affiliation or national origin.
- B. Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on personal knowledge or records of the person furnishing it and consists of-
  - 1) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or
  - 2) an evaluation of the character, loyalty, or suitability of such individual.
- C. Coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment for the refusal of any person to engage in such political activity.
- D. Deceive, or willfully obstruct any person with respect to such person's right to compete for employment.
- E. Influence and person to withdraw from competition from any position for the purpose of improving or injuring the prospects of any other person for employment.
- F. Grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.
- G. Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in, or to, a civilian position any individual who is a relative of such employee, if such position is in the agency in which such employee is serving as a public official or over which such employee exercises jurisdiction or control as such and official.
- H. Take or fail to take or threaten to take or fail to take a personnel action with respect to any employee or applicant for employment because of-
  - 1) any disclosure of information by an employee or applicant which the employee or applicant reasonably evidences-
    - a) a violation of any law, rule or regulation, or
    - b) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

- 2) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee or applicant reasonably believes evidences-
  - a) a violation of any law, rule or regulation, or
  - b) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
- I. Take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of-
  - 1) the exercise of any appeal, complaint, or grievance right granted by law, rule or regulation;
  - 2) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (1);
  - 3) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or
  - 4) refusing to obey an order that would require the individual to violate the law.
- J. Discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness, any conviction of the employee or applicant, for any crime under the laws of any State, of the District of Columbia, or of the United States.
- K. Knowingly take, recommend, or approve any personnel action or fail to take, recommend, or approve any personnel action, if the taking of such action would violate a veteran's preference requirement.
- L. Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in Section 4 of this Article.