

EMPLOYEE RELATIONS NOTES

December 2008
For the REE Agencies, USDA

Employee Relations Branch (ERB), HRD, ARS
301-504-1355

For management advice on issues of Employee Relations and Labor Relations, please do not hesitate to call your servicing specialist.

All past issues of ER Notes are now on the Employee Relations Branch (ERB) webpage at <http://www.afm.ars.usda.gov/hrd/er/index.htm>

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Welcome Janyce Wilkins to the Employee Relations Branch

It is our pleasure and privilege to welcome Janyce Wilkins to the Employee Relations Branch. Janyce replaces Michelle King on our staff. She comes to us with a wealth of experience and training. Janyce worked for the Montgomery County Police Department for over 20 years. During her years of service with Montgomery County, she also provided guidance to the Department in areas involving management and labor issues. She attended and graduated from the University of Maryland, School of Law, and is licensed to practice law. She began a solo law practice where she handled a variety of matters, including employment and labor law. Janyce also has taught coursework at a local community college. She comes to us now from the Department of Health and Human Services.

Americans with Disabilities Act expands definition of 'Disabled'

The ADA Amendments Act was signed into law on September 25, 2008, and will become

effective **January 1, 2009**. Through these amendments, Congress rejected a number of U.S. Supreme Court decisions that it viewed as improperly narrowing ADA coverage in a manner that excluded individuals who were meant to fall within the protections of the act. The amendments will have a significant impact on disability determinations.

Major life activities:

- The ADA Amendments Act states that: "major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working."
- Major life activities also include "the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions."

"Regarded as disabled":

- An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.
- The "regarded as" definition does not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

For further guidance, please feel free to contact your servicing specialist for more information.

Time in Grade Rule Eliminated!

The Office of Personnel Management (OPM) is eliminating the time-in-grade restriction on advancement to competitive service positions in General Schedule. The rule eliminates the 52-week time-in-grade requirement for promotions. Employees must continue to meet occupational qualification standard requirements and any additional job-related qualification requirements established for the position. **The rule is effective March 9, 2009.**

Things not to say at a Performance Evaluation:

We do not know if the following is true, but according to a reliable source (the internet), the following are **actual** comments that have appeared in performance evaluations given by Federal

supervisors. (DISCLAIMER: *ERB does not recommend such wording be used, although sometimes we understand why.*)

- ☺ Has two brains, one is lost, and the other is out looking for it.
- ☺ Since my last report, this employee has reached bottom and has started to dig.
- ☺ Sets low personal standards, and then consistently fails to achieve them.
- ☺ This employee is depriving a village somewhere of an idiot. (*OUCH!*)
- ☺ Gates are down, the lights are flashing, but the train isn't coming.
- ☺ If you see two people talking and one looks bored, he's the other one.
- ☺ The wheel is turning, but the hamster is dead.
- ☺ If you stand close enough to him, you can hear the ocean. (*OH, CRUEL!*)
- ☺ He would argue with a signpost.
- ☺ Doesn't have ulcers, but is a carrier.
- ☺ This young lady has delusions of adequacy.
- ☺ This employee should go far, and the sooner the better.
- ☺ Got a full six pack, but lacks the plastic thing to hold it all together.
- ☺ When his IQ reaches 50, he should sell. (*NOW WE'RE GETTING MEAN*)
- ☺ When she opens her mouth, it seems it is only to change feet.
- ☺ Donated his brain to science before he was done using it.
- ☺ One neuron short of a synapse.
- ☺ It's hard to believe he beat out 1,000 other sperm.
- ☺ If he were more stupid, he'd have to be watered twice a week.
- ☺ This employee is really not so much of a has been, as a definite won't be.



Holiday Reminder---“Tis’ the Season” By Ray Sheehan

‘Tis holiday season, cheer, laughter, receptions,
Lighting of candles, bells, decking the hall,
but please don't forget, you must be ethical.
The acceptance of gifts (see footnote 1) from non Feds, of course
is a problem where givers are prohibited sources (see footnote 2).
Or, if there exists yet another condition,
the gift was based on (your) official position.
Should environs like these, with you ever arise,
the rule is decline or else pay market price.
Still the rules needn't always mean indigestion,
they're written by lawyers, so there are exceptions.
Like gifts under \$20, you can take without fear,
if all gifts from that source total \$50 (or less) that year.
And of course there are gifts from our family and friends,
if based on that tie; we don't care what they spend.

And it's the same from an outside interest or job,
at your spouse's firm's party, go and hobnob.
One caveat please: amidst small talk and laughter,
decline if it's really you that they're after. (See footnote 3).

Yet another waiver that's helpful to donees,
covers things open to all Fed employees.
And perish'ble items, like foodstuffs or flowers
can be shared with the office, 'fore it spoils or sours. (See footnote 4).
The occasions that cause the greatest of heartburn,
cost above 20 (\$) with no true friends to turn.
If the food is gourmet and scotch isn't blended,
the gath'ring's OK only if "widely attended."
Needs: attendees, many and varied in vision,
and you're there supporting an agency mission.
This means agency approval in advance, (see Footnote 5)
it's not for intimate groups, or extrav'gance.
As between employees, 10's (\$) the max you can do,
for a boss, or anyone who makes more than you (see footnote 6).
You cannot solicit from your Fed'ral cohorts,
nor from outside sources, lest we hear reports.
You can bring food to the office for a division brunch,
but "no way" on taking the boss out to lunch.
If invited to homes, hospitality's fine,
for your boss's house party, buy the good wine (see footnote 7)
These rules can be vexing, our treatment here shallow,
if you need more depth, see the footnotes that follow (see footnote 8).
For a question that lingers, nags, irks, pains, or sticks,
go to our website modules 2, 3 and 6.
One final thought before a-reveling you go,
if things seem dicey, you can always say "no."
With all this in mind and applying sound reason,
go forth and have a great Holiday Season.

FOOTNOTES: (sorry about the following, but Ray is, after all, a lawyer)

1. A "gift" would include anything (*e.g.*, tangible items, privileges, services, etc.) of value that is offered to an employee for less than the market value (*e.g.*, 10% discount).
2. A "prohibited source" is anyone who has business or seeks to do business with USDA (including any of its agencies or offices); seeks official action from USDA; conducts activities regulated by USDA; has interests that can be substantially affected by the performance or nonperformance of your official duties; or any outside organization a majority of whose members are prohibited sources.
3. For example, an invitation is based on your official position where the inviting party can be affected by the performance or nonperformance of your official duties; your official presence is

used to attract others to the event; the gift to your spouse is indirectly meant to influence you; or the gift provides the donor with special access to you.

4. If nonperishable and otherwise not acceptable, the gift should be returned to the donor.

5. Oral approval is OK unless you can substantially affect the interests of the host through the performance or nonperformance of your official duties; then it must be in writing.

6. Unless there is a personal friendship and there is no superior/subordinate relationship involved.

7. A hospitality gift brought in appreciation for being invited to someone's home may be worth more than \$10. However, the gift should be customary for the occasion and not extravagant.

8. USDA Office of Ethics routinely and shamelessly exercises its right to literary license.

For additional information on gift acceptance, please visit the Science Ethics Branch (SEB) website at: <http://www.usda-ethics.net/science/gifts/holidaygifts.htm>

Submitted by Deborah Rodriguez, USDA Office of Ethics

The Funny side of ER



“Ten Things to say about gifts you don’t like”

10. Boy, if I have not recently shot up four sizes; that would've fit.
9. It would be a shame if the garbage man accidentally took this from me.
8. Thanks, this is perfect for wearing in the basement.
7. Well, well, well....
6. I really don't deserve this.
5. Gosh, I hope this never catches fire!
4. I love it, but I fear the jealousy it will inspire.
3. If the dog buries it, I'll be furious!
2. Sadly, tomorrow I enter the Federal witness protection program.
1. To think I got this the year I vowed to give all my gifts to charity.

www.ahajokes.com

Joke of the Month

“I want to see something really cheap”

After being away on business for a week, before December 25th, Tom thought it would be nice to bring his wife a little gift. “How about some perfume?” he asked the cosmetics clerk. She showed him a bottle costing \$50. “That’s a bit much,” said Tom, so she returned with a smaller bottle for \$30. “That’s still quite a bit,” Tom groused. Growing disgusted, the clerk brought out a tiny \$15 bottle. Tom grew agitated, “What I mean,” he said, “is I’d like to see something real cheap.” So the clerk handed him a mirror.

www.ahajokes.com

What Do We Do?

Your Employee Relations Specialist!! We are here to work closely with you and provide advice and guidance on how best to address employee performance and conduct issues. We will help you prepare performance improvement plans, leave restriction letters, requests for medical information, proposal letters, and decision letters. We also serve as Agency Representatives before the Merit Systems Protection Board (MSPB); negotiate settlement of mediated disputes, MSPB appeals, discrimination complaints (affirmative defense in MSPB appeals), whistleblower complaints, Uniformed Services Employment and Reemployment Rights Act (USERRA) complaints, and other workplace conflicts; investigate Office of Inspector General (OIG) Hotline Complaints, prepare Reports of Investigation, and initiate through management, any remedial actions; provide analysis and final decision on formal grievances; and develop employee relations instructional material, with an emphasis on remedial and preventive action, and train all employees. Call us as soon as you suspect you may have a problem with an employee. The names of the Employee Relations Specialists, the Areas they service, and their telephone numbers and e-mail addresses are available on the ERB webpage at:

<http://www.afm.ars.usda.gov/hrd/er/index.htm>.

Inside the Employee Relations Branch



The Employee Relations Branch also includes Labor Relations and Employee Relations Policy. These programs are administered REE-wide.

Labor Relations

Manages the Labor Relations Program, which includes contract management, negotiations, Partnerships, impact and implementation bargaining, and arbitration. Represents and serves as an advisor to management officials during union contract negotiations.

Employee Relations Policy

Initiates ER policy, develops ER training and communications, adjudicates grievances, and provides investigative leadership. Provides guidance and service in preparation and presentation before MSPB.

EMPLOYEE AND LABOR RELATIONS DIRECTORY

| <u>Office of the Branch Chief:</u> | <u>Phone Number</u> | |
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| Dowell, Kathy | 301-504-1355 | Secretary |
| Jones, Kevina | 301-504-1345 | Support Staff |
| Wilcox, Jane | 301-504-1557 | Support Staff |
| | <u>Phone Number</u> | <u>Area</u> |
| Byrd, Mary | 301-504-1349 | Senior ER Advisor |
| Burns, Jack | 301-504-1519 | Labor Relations |
| Davis, Janelle | 301-504-1386 | HR Asst |
| Gibson, Betty | 301-504-1342 | Beltsville |
| Hernandez, Yansi | 301-504-1585 | NAA |
| Jacob, Calvin | 301-504-1575 | SPA |
| Lovell, Rochelle | 301-504-1447 | PWA |
| Martin, Ivy | 301-504-1338 | SAA |
| Outlaw, Dottie | 301-504-1409 | MSA |
| Oyemade, Yemi | 301-504-1347 | MWA |
| Pannell, Sheila | 301-504-1344 | NPA |
| Pasha, Augustus | 301-504- 7251 | HQ/NAL |
| Rollow, Paula | 301-504-1531 | Team Ldr |
| Whitehead, Katina | 301-504-1390/202-694-5623 | Team Ldr/ERS/CSREES |
| Wilkins, Janyce | 301-504-4888 | ER Policy |
| Williams, Vincent | 301-504-1322 | Team Ldr/ NASS |

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