

U.S. Office of Special Counsel (OSC) Information Sheet



Granting an Unauthorized Preference – 5 U.S.C. § 2302(b)(6)

PURPOSE

This information sheet provides general guidance and background information on **5 U.S.C. § 2302(b)(6)**. This document does not serve as legal advice and should not be cited as legal authority. Rather, the statute and current case law control with respect to matters discussed here.

WHAT IS (b)(6)?

Section 2302(b)(6) prohibits an official with the authority to take or influence a personnel action from granting any preference or advantage not authorized by law, rule, or regulation to any applicant *for the purpose of improving or injuring the prospects* of any person. The provision does not require that the unauthorized action result in an actual advantage; it only requires that the intent be to provide one.

ELEMENTS NECESSARY TO ESTABLISH A (b)(6) VIOLATION

The elements necessary to establish a violation are: (1) a preference or advantage was granted; (2) the official who granted the advantage or preference had personnel action authority; (3) the preference or advantage was not authorized by civil service law, rule, or regulation; and, (4) the official who granted the preference or advantage did so purposefully and for the specific intent of improving the prospects of an applicant or injuring the prospects of an applicant.

WHAT IS PROHIBITED?

Examples of section 2302(b)(6) violations include:

- A hiring official giving preferential treatment to a candidate because they are a close friend or previous business associate, even though the candidate does not meet the minimum qualifications or have the experience required for the position.
- Including selective placement factors in a vacancy announcement to target and preferentially refer a preferred candidate.
- Re-advertising a position to give an individual who missed the initial vacancy announcement the chance to apply.
- A hiring manager deliberately changing the qualifications or job description to favor a particular candidate they have in mind, even though this change is not based on the job's true needs or requirements.
- Changing the area of consideration or grade level for which a position is normally advertised to ensure that a particular individual can apply and be selected.
- Delaying the recruitment process to ensure that a preferred candidate can apply for the position.

TIPS AND RECOMMENDATIONS

1. Base hiring decisions on the qualifications, experience, and skills required for the position, rather than personal relationships or preferences that are not grounded in law, rule, or regulation.
2. Establish and follow a clear and consistent recruitment and selection process. Ensure that job announcements, candidate evaluations, and selection criteria are standardized and objective.
3. If uncertain about the application of a preference or hiring decision, consult with local experts.

For more information on filing a complaint or making a disclosure: 202-804-7000, 800-872-9855 or submit a question at info@osc.gov. Please note that OSC may not provide advice regarding the merits of a complaint or whether the allegation meets the statutory definitions.

Updated and detailed information on OSC and its procedures can be found on OSC's website at <https://osc.gov>.

For information about training and the 2302c Certification Program please contact OSC's Outreach Unit via email at certification@osc.gov.