

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



Influencing Withdrawal from Competition – 5 U.S.C. § 2302(b)(5)

PURPOSE

This information sheet provides general guidance and background information on **5 U.S.C. § 2302(b)(5)**. 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)(5)?

Section 2302(b)(5) prohibits an official with the authority to take or influence a personnel action from attempting to influence someone to withdraw from competition *for the purpose of improving or injuring the employment prospects* of any person. There must be evidence of intent to encourage the withdrawal, and the official must make a statement or take an action aimed at influencing that decision.

Even if no withdrawal occurs, attempting to influence someone to withdraw is still prohibited under section 2302(b)(5). Additionally, the Merit Systems Protection Board has determined that making truthful statements with the intent to encourage a withdrawal may also constitute a violation.

WHAT IS PROHIBITED?

Examples of section 2302(b)(5) violations include:

- A veteran's resume is moved to the top of the list of eligible applicants due to their qualifications and point preference, placing the veteran ahead of a preferred non-veteran candidate. In response, the hiring official makes statements to the veteran with the intent to encourage them to withdraw, telling the veteran that they were unqualified and suggesting that the more qualified preferred applicant should take the position.
- An agency official intentionally and disproportionately emphasizes negative aspects of a role, informing an applicant that the position requires extensive travel at moment's notice or that moving expenses will not be paid, because the official wants to dissuade the applicant and proceed with hiring a preferred candidate.
- An official informs an applicant for a promotional opportunity that the applicant need not go through the application process because the position "is not for them."

TIPS AND RECOMMENDATIONS

1. Ensure that hiring decisions are based on a candidate's qualifications, skills, and experience.
2. Familiarize yourself with veterans' preference and other legal hiring authorities.
3. Managers should be upfront about job demands but avoid intentionally framing them in a way to dissuade candidates from proceeding with the application process.
4. Provide consistent information and communicate to all candidates in a fair and equal manner.
5. Let the hiring process unfold naturally and be mindful of informal remarks, such as suggesting to the candidate that "the role may not be a good fit" or that another candidate is the optimal choice for an open opportunity.

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.