U.S. Office of Special Counsel (OSC)

Information Sheet

Violating Merit System Principles – 5 U.S.C. § 2302(b)(12)

PURPOSE

This information sheet provides general guidance and background information on **5 U.S.C. § 2302(b)(12)**. 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 2302(b)(12)?

Section 2302(b)(12) prohibits an official with the authority to take or influence a personnel action from doing so in violation of any law, rule, or regulation that implements or directly concerns the merit system principles defined at 5 U.S.C. § 2301. While the merit system principles are not directly enforceable on their own, this provision prohibits an official from taking or failing to take an unlawful personnel action that conflicts with the principles and does not fall into one of the other categories of prohibited personnel practices.

WHAT IS PROHIBITED?

Depending on the particular facts, the following may violate section 2302(b)(12):

- Failure to provide an annual performance appraisal.
- Permitting an employee to remain on a detail to a higher grade for more than 120 days without competition.
- Failure to provide an adequate notice of appeal rights when taking an adverse action.
- Subverting the standard hiring process by using a non-competitive hiring authority to reach a preferred candidate who did not have the status (i.e., lacks time in grade) to compete through the regular process. **NOTE**: This is also a potential section 2302(b)(6) violation.

TIPS AND RECOMMENDATIONS

1. Any violation of (b)(12) is, by definition, also a violation of an underlying law, rule, or regulations, so full legal compliance with relevant laws, rules, or regulations will avoid any violation of (b)(12). Consult your local experts. Proactively engage and collaborate with human resources and agency counsel when taking a personnel action, ensuring agency compliance with applicable laws, regulations, and policy.
2. When taking a personnel action, document the rationale for the decision.
3. Educate employees on their rights and responsibilities by providing regular training on the merit system principles and prohibited personnel practices.