

## **Furloughs May Result in Already Overworked Feds Being Asked to do More with Less**

By Mathew B. Tully  
Ephemerization. Federal employees who work with information technology are probably familiar with this term. It refers to the act of doing “more and more with less and less until eventually you can do everything with nothing.” It appears lawmakers in Congress are now trying to use sequestration as a means to implement ephemerization in the federal government. On March 1, President Barack Obama ordered across-the-board spending cuts designed to trim \$85 billion from the federal budget through Oct. 1. The cuts, known as sequestration, will result in hundreds of thousands of federal employees being furloughed. There is little doubt that federal employees will be asked to do more with less. Some employees, forced to shoulder extra work, may reach a breaking point, and the big question becomes whether agencies will take action against them when they fail to do more with less. Work environments are bound to become more stressful. Unfortunately, as the U.S. Merit Systems Protection Board noted in *G. Diane Miller v. Department of Defense*

(2010), “[a]n employee is not guaranteed a working environment free of stress.” Federal employees, however, need to know they have rights in this situation. Sequestration does not give agencies a free pass to suddenly change federal employees’ performance standards and impose unrealistic expectations on them. Employees should not have their performance ratings suffer because they are failing to keep up with work beyond their noticed performance elements. Performance elements must be in place for at least 90 days before agencies can start rating employees, and the employees must be notified of these changes. Additionally, performance standards and elements must be realistic and reasonably attainable. The case, *Irene Yetman v. Department of the Army*

(1988), involved an Occupational Health Section (OHS) chief at a military base. She assumed this position amid a major influx of military and civilian personnel that greatly increased her workload. Management had promised her it would hire two nurses and provide additional clerical assistance to accommodate the increased workload. No such support was provided, and the OHS chief’s supervisor still required her to complete all the work within her performance standards. The agency characterized her inability to keep up with her work as insubordination and removed her. An administrative judge found her performance standards to be “unreasonable and impossible...given the circumstances at [the base].” While these performance standards were based on similar positions at other bases, the judge noted those other installations had more staff and fewer demands on the OHS chief. Further, the OHS chief’s supervisor denied her from working more than 40 hours a week, supporting the administrative judge’s decision that appellant’s workload was “so excessive as to preclude her from performing the critical elements of her position.” The administrative judge ordered the agency to cancel the employee’s removal and reinstate her. Federal employees who feel overwhelmed should focus on doing the best work they can despite their circumstances. Simply resigning may not necessarily add strength to a claim against the agency. For example, in *Barbara Jones v. Court Servs. & Offender Supervision Agency for DC*

(2008), the MSPB held that “a decision to resign or retire rather than be removed, without

more, does not amount to coercion.” On the other hand, if the agency takes an adverse action against the employee for unsatisfactory performance or for refusing to work uncompensated hours because he or she “chose to perform only that amount of work which [he or] she could reasonable do under the circumstances,” an employee may have a legal cause of action. Federal employees who believe they are being penalized for failure to meet unrealistic standards should immediately contact a federal employment law attorney.