

## Fed Employee Survey Could Show Tip of the Iceberg for Favoritism

An annual Office of Personnel Management (OPM) survey is indicating many federal employees hold negative views about the legitimacy of performance-based raises and merit-based promotions. These findings could be showing the tip of the iceberg when it comes to the role favoritism in the federal workplace.

According to OPM's 2011 Federal Employee Viewpoint Survey

, 47 percent of federal employees surveyed reported saying pay raises are not dependent on performance. Additionally, 35 percent of respondents said promotions are not based on merit and 34 percent said differences in performance are not recognized. These findings could provide an idea of the not yet-released results of a separate survey on favoritism that the U.S. Merit Systems Protection Board

announced last summer.

The Civil Service Reform Act of 1978 protects federal employees "against arbitrary action, personal favoritism, or coercion for partisan political purposes." See 5 U.S.C. § 2301(b)(8)(A). Nevertheless, some federal managers cannot stop playing favorites. Fortunately, such practices are increasingly becoming unwelcome in the federal workplace. According to the OPM survey, 52.4 percent of respondents said arbitrary actions, personal favoritism and coercion for partisan political purposes are not being tolerated, compared to 51.3 percent the previous year and 48.8 percent in 2006.

Under U.S.C. § 2302(b)(6), federal supervisors commit prohibited favoritism by granting an unauthorized preference or advantage to an employee or applicant for employment so they can improve or hurt any person's job prospects. As the MSPB

noted in its July newsletter

, examples of favoritism include a supervisor's decision:

to grant a cash bonus to one employee but not another who performed similar work at the same performance level;

to grant one employee a grade or step increase but deny it to another similarly situated employee who performed at the same level;

to attempt to arrange or encourage the hiring of an unqualified friend for a position.

Federal employees who believe they suffered from a prohibited personnel action (PPP) influenced by favoritism could file a complaint with the Office of Special Counsel (OSC). The employee might also instead be able to appeal to the MSPB

if a PPP amounted to an appealable action before the board.

Favoritism, however, can come in many forms. Sometimes it can be based on sex, race, religious or other discriminatory factors. Under these circumstances, a federal employee might want to file a complaint against an agency with the Equal Employment Opportunity Commission (EEOC)

, alleging discrimination in violation of laws such as Title VII of the Civil Rights Act.

For example, if a supervisor denies a female employee a step or grade increase but grants it to her similarly situated male coworker because the supervisor prefers male employees, it is an example of prohibited favoritism. However, this type of favoritism is really a claim of discrimination, preference based on a protected category (age, sex, race, disability status, national origin, etc.). OSC is authorized to investigate these claims, but the agency will defer such complaints to the Equal Employment Opportunity

process. See 5 C.F.R. § 1810.1.

If the basis of the favoritism is not one of the categories protected by the EEO process and within the EEOC

's jurisdiction, such as discrimination based upon marital status or political affiliation, the OSC will accept and review those complaints.

Federal employees who believe their careers have suffered because of a supervisor's favoritism should immediately contact a federal employment

lawyer who can help them assert their rights.